MONTANA
ADMINISTRATIVE
REGISTER

ISSUE NO. 9 – MAY 9, 2025

TABLE OF CONTENTS

PROPOSAL NOTICES

- Commerce, Department of, Title 8
  - 2025-131.1 – Notice of Proposed Rulemaking – Grant Administration Manual of the Community Development Block Grant Program.
- Labor and Industry, Department of, Title 24
  - 2025-26.1 – Notice of Proposed Rulemaking – Revision of Certain Rates in the 2025 Montana Prevailing Wage Rates.
  - 2025-29.1 – Notice of Proposed Rulemaking – Unemployment Insurance – Definitions – Claim Appeal Dates – Redetermination Requests – General Rule Clarification – Implementation of House Bill 652, 2023 Montana Legislature, Chapter 731.
  - 2025-30.1 – Notice of Proposed Rulemaking – 2025 Updates to Medical Fee Schedules, Formulary, and Implementation of House Bill 143 and Senate Bill 109 of the 2025 Montana Legislature.
  - 2025-104.1 – Notice of Proposed Rulemaking – Weights and Measures Amendment of the NIST 130 Handbook.
  - 2025-117.1 – Notice of Proposed Rulemaking – Establishing Rules for the Contingent Litigation Fund.
  - 2025-137.1 – Notice of Proposed Rulemaking – Allowing Optometrists to Perform Laser Surgical Procedures – Requiring the Board to Set Qualifications for a Laser Surgery Certificate in Rule.

ADOPTION NOTICES

- Livestock, Department of, Title 32

    - 2025-18.2 – Notice of Adoption – Testing Within the DSA.

    - 2025-19.2 – Notice of Adoption – Adoption and Incorporation by Reference of Milk Sanitation Documents.

    - 2025-20.2 – Notice of Adoption – Brands Enforcement Fees – Grazing Permits.

    - 2025-96.2 – Notice of Adoption – Milk Producer Pricing.

- Public Health and Human Services, Department of, Title 37

    - 2025-168.2 – Notice of Adoption – Adult Protective Services.

- Revenue, Department of, Title 42

    - 2025-42.2 – Notice of Adoption – Lessening Certain Procedural Burdens for a Property Owner During an Informal Classification and Appraisal Review and Clarifying Department Processes for It to Consider Sale Price as an Indication of Market Value for the Owner's Property.

- Secretary of State, Office of, Title 44

    - 2025-24.2 – Notice of Adoption – Extension of the Waiver for State Agency Filing Fees Related to Publication in the Montana Administrative Register.

OTHER

- Public Health and Human Services, Department of, Title 37

    - 37-1044 – Supplemental Notice of Rulemaking – Licensure of Day Care Facilities.

- Transportation, Department of, Title 18

    - 2025-87.2 – Supplemental Notice of Proposed Rulemaking – Motor Carrier Services.

MONTANA
ADMINISTRATIVE
REGISTER

DEPARTMENT OF COMMERCE

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-131.1

Summary

Amendment of ARM 8.94.3727 pertaining to the Grant Administration Manual of the Community Development Block Grant Program

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Hearing Date and Time

Thursday, May 29, 2025, at 10:00 a.m.

Virtual Hearing Information

The Department of Commerce will hold a public hearing via Zoom to consider the proposed amendment of the above-stated rule.

Video: https://mt-gov.zoom.us/j/84482924831?pwd=yMlaIpQswWuZkLtwJRUEasrwg2YOCH.1

Comments

Interested persons may submit data, views, or arguments orally at the Zoom hearing. Written data, views, or arguments may be submitted to Jada Maynor by email: DOCadministrativerules@mt.gov; or by mail: P.O. Box 200501, Helena, MT 59620. Comments must be received by Friday, June 6, 2025, at 5:00 p.m.

Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Thursday, May 15, 2025, at 5:00 p.m.

Contact

Jada Maynor
(406) 841-2596
jada.maynor@mt.gov

General Reasonable Necessity Statement

The Department of Commerce proposes to adopt by reference the updated Grant Administration Manual (June 2025) for the Community Development Block Grant (CDBG) Program and incorporate the manual as rules of the department. The CDBG Program is a U.S. Department of Housing and Urban Development (HUD) pass-through grant program that provides funding to communities for planning, infrastructure, community and public facilities, and housing. Updates to the manual are intended to update HUD requirements, streamline processes, and simplify language. The updates include reducing the use of technical language, streamlining chapters and sections, reformatting content, and reducing the manual from 245 pages to 66 pages. The proposed manual can be found at https://commerce.mt.gov/Infrastructure-Planning/Programs-and-Services/Community-Development-Block-Grant/. The rule amendments also remove references to the Neighborhood Stabilization Program because the program no longer exists.

Rulemaking Actions

AMEND

The rule proposed to be amended is as follows, stricken matter interlined, new matter underlined:

8.94.3727 INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE CDBG PROGRAM

(1) The Department of Commerce adopts and incorporates by reference the following as rules for the administration of ~~the~~ CDBG ~~and NSP~~ programs:

(a) the Application Guidelines for the Community Development Block Grant Economic Development Program (July 2022); and

(b) the Montana Community Development Block Grant Program ~~and Neighborhood Stabilization Program FFY 2015-2016~~ Grant Administration Manual (June 2025).

(2) The rules incorporated by reference in (1) relate to the following:

(a) policies governing the program;

(b) requirements for CDBG Economic Development applicants;

(c) procedures for evaluating CDBG Economic Development applications;

(d) procedures for local project start up;

(e) environmental review of project activities;

(f) procurement of goods and services;

(g) financial management;

(h) protection of civil rights;

(i) fair labor standards;

(j) acquisition of property and relocation of persons displaced thereby;

(k) administrative considerations specific to public facilities, housing and neighborhood renewal, economic development, and neighborhood stabilization projects;

(l) project audits;

(m) public relations;

(n) project monitoring; and

(o) planning assistance.

(3) Copies of the regulations adopted by reference in (1) may be obtained from the Department of Commerce, Community MT, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523, or on the Community MT's web site at ~~https://comdev.mt.gov/Programs-and-Boards/Community-Development-Block-Grant-Program/Economic-Development~~ https://commerce.mt.gov/Infrastructure-Planning/Programs-and-Services/Community-Development-Block-Grant/.

Authorizing statute(s): 90-1-103, MCA

Implementing statute(s): 90-1-103, MCA

Small Business Impact

Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

Bill Sponsor Notification

The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

Interested Persons

The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program(s) the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written requests may be mailed or delivered to the contact person above or may be made as directed at a rule hearing held by the department.

Rule Reviewer

Brenda Elias

Approval

Mandy Rambo, Acting Director

MONTANA
ADMINISTRATIVE
REGISTER

DEPARTMENT OF LABOR AND INDUSTRY

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-104.1

Summary

Weights and Measures Amendment of the NIST 130 Handbook

Hearing Date and Time

Thursday, May 29, 2025, at 1:00 p.m.

Virtual Hearing Information

A public hearing will be held via remote conferencing to consider the proposed changes to the rule listed in this notice. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

Join Zoom Meeting: https://mt-gov.zoom.us/j/86218841480

Meeting ID: 862 1884 1480; Password: 381918

Dial by Telephone: +1 646 558 8656

Meeting ID: 862 1884 1480; Password: 381918

Comments

Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728; Helena, Montana 59624. Comments must be received by Friday, June 6, 2025, at 5:00 p.m.

Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Thursday, May 22, 2025, at 5:00 p.m.

Contact

Department of Labor and Industry
(406) 444-5466
laborlegal@mt.gov
Montana Relay: 711

Rulemaking Actions

AMEND

The rule proposed to be amended is as follows, stricken matter interlined, new matter underlined:

24.351.105 ADOPTION OF STATE WEIGHTS AND MEASURES STANDARDS AND RECOMMENDATIONS

(1) Subject to the provisions of Title 32, chapter 12, part 2, and Title 82, chapter 15, part 1, MCA, the bureau adopts and incorporates by reference the following publications for weights and measures in Montana:

(a) NIST Handbook 44, 2023 edition: Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices with the following modifications:

(i) Delete paragraph UR.3.3. Single-Draft Weighing found in section 2.20, Scales.

(ii) Delete paragraph UR.2.2. Ticket Printer, Customer Ticket found in section 3.31, Vehicle-Tank Meters.

(b) NIST Handbook 130, 2023 edition: Uniform Laws and Regulations in the Areas of Legal Metrology and Fuel Quality with the following modifications:

(i) Delete in its entirety III, Uniform Laws part B, Uniform Weighmaster Law.

~~(i)~~(ii) IV Uniform Regulations part A, Uniform Packaging and Labeling Regulation section 14, insert in the blank space January 1, 2024, for the effective date.

~~(ii)~~(iii) IV Uniform Regulations part B, Uniform Regulation for the Method of Sale of Commodities, section 5 insert in the blank space January 1, 2024, for the effective date.

(iv) Delete in its entirety IV Uniform Regulations part C, Uniform Unit Pricing Regulation.

~~(iii)~~(v) IV Uniform Regulations part D, Uniform Regulation for the Voluntary Registration of Servicepersons and Service Agencies for Commercial Weighing and Measuring Devices, section 3, Registration Fee, insert in all blank spaces, $25.00. Section 8 insert P.O. Box 200516 Helena Mt 59620 in the blank space.

~~(iv)~~(vi) IV Uniform Regulations part E. Uniform Regulation for National Type Evaluation, section 4(c) through (g) insert in all blank spaces January 1, 2024, for the effective date.

~~(v)~~(vii) IV Uniform Regulations part E. Uniform Regulation for National Type Evaluation, section 7, insert in the blank space January 1, 2024, for the effective date.

(viii) IV Uniform Regulations part F, Uniform Fuels and Automotive Lubricants Regulation, section 2.1.2. Gasoline-Ethanol Blends. (a), is deleted and replaced with the following subsection: "(a) The maximum vapor pressure shall not exceed the latest version of ASTM D4814, 'Standard Specification for Automotive Spark-Ignition Engine Fuel,' limits by more than 1.0 psi year-round for gasoline-ethanol blends above 1%."

~~(c) NIST Handbook 130, 2023 edition: Uniform Laws and Regulations in the Areas of Legal Metrology and Fuel Quality with the following modifications:~~

~~(i) Delete in its entirety Section III, part B Uniform Weighmaster Law.~~

~~(ii) Delete in its entirety Section IV, part C Uniform Unit Pricing Regulation.~~

~~(d)~~(c) NIST Handbook 133, 2022 edition: Checking the Net Contents of Packaged Goods.

(2) A copy of NIST Handbooks 44, 130, and 133 can be obtained from the United States Department of Commerce, National Institute of Standards and Technology, National Conference on Weights and Measures, Gaithersburg, MD 20899-0001, or online at www.nist.org.

Authorizing statute(s): 30-12-202, 82-15-102, MCA

Implementing statute(s): 30-12-202, 30-12-205, 30-12-401, 30-12-406, 30-12-407, 30-12-408, 30-12-409, MCA

Reasonable Necessity Statement

The proposed amendments to (1)(b) and the repeal of (1)(c) are necessary to condense the adoption of and amendments to the NIST Handbook 130, 2023 edition, into one subsection. Formatting the rule to include all the amendments to the NIST Handbook 130 under one subsection conforms with rule-writing standards, and the amendments help to clarify and simplify the rule.

The proposed amendment in (1)(b)(viii) adopting the one-pound waiver is necessary because gasoline-ethanol blends are regularly sold in Montana and other "high altitude states." The proposed amendment restores the one-pound waiver contained in the NIST 130 Handbook, 2012 edition, that was effective until the department adopted the 2023 edition in ARM 24.351.105, 2023 Montana Administrative Register, page 1871, effective January 1, 2024.

Small Business Impact

Pursuant to 2-4-111(1), MCA, the small businesses that will probably be affected by the proposed rule change are small gas stations and other fuel suppliers in Montana that sell and distribute gasoline-ethanol blends. Although this rule change will likely have a positive effect on small businesses by allowing a 1.0 psi variation of vapor pressure for the gasoline-ethanol blends year-round, the agency has determined that the proposed rule change will not create a significant and direct impact on these small businesses.

Bill Sponsor Notification

The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

Interested Persons

The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

Rule Reviewer

Quinlan L. O'Connor

Approval

Sarah Swanson, Commissioner

MONTANA
ADMINISTRATIVE
REGISTER

DEPARTMENT OF LABOR AND INDUSTRY

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-117.1

Summary

Establishing rules for the contingent litigation fund

Hearing Date and Time

Friday, May 30, 2025, at 9:00 a.m.

Virtual Hearing Information

A public hearing will be held via remote conferencing to consider the proposed changes to the rule listed in this notice. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

Join Zoom Meeting: https://mt-gov.zoom.us/j/84790797927

Meeting ID: 847 9079 7927; Password: 921022

Dial by Telephone: +1 646 558 8656

Meeting ID: 847 9079 7927; Password: 921022

Comments

Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received by Friday, June 6, 2025, at 5:00 p.m.

Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Friday, May 23, 2025, at 5:00 p.m.

Contact

Department of Labor and Industry
(406) 444-5466
laborlegal@mt.gov
Montana Relay: 711

Rulemaking Actions

ADOPT

The rule proposed to be adopted is as follows:

NEW RULE 1 CONTINGENT LITIGATION FUND

(1) [House Bill 227, Section 1 (2025)] requires licensees to pay a fee into the contingent litigation fund if licensed by a covered board or program.

(a) A list of covered boards and programs will be published by the department on its website annually by June 30, and is applicable to licensees beginning July 1 of the same year.

(b) Licensees of covered boards and programs shall pay a fee of $5 on initial application or renewal, as applicable, in the covered year.

(2) Money in the contingent litigation fund will be distributed as follows:

(a) By March 31 of each year, all eligible expenses will be identified.

(i) If the fund contains sufficient money to cover all eligible expenses, transfers to the applicable board or program will be made.

(ii) If the fund does not contain sufficient money to cover all eligible expenses, money will first be allocated to any board whose operations may be suspended pursuant to 37-1-101, MCA, without recovery. If multiple boards are subject to suspension, money will be allocated on a pro rated basis between them. Any additional money in the fund will be allocated among the remaining boards and programs on a pro rated basis.

(b) By June 30 of each year, eligible expenses not previously covered will be identified.

(i) If the fund contains sufficient money to cover all eligible expenses, transfers to the applicable board or program will be made. If there is any remaining money in the fund, it will be transferred to pay previous expenses on a pro rated basis.

(ii) If the fund does not contain sufficient money to cover all eligible expenses, money will first be allocated to any board whose operations may be suspended pursuant to 37-1-101, MCA, without recovery. If multiple boards are subject to suspension, money will be allocated on a pro rated basis between them. Any additional money in the fund will be allocated among the remaining boards and programs on a pro rated basis.

(3) As used in this rule, the following definitions apply:

(a) "Eligible expenses" means attorney fees and costs accrued during the current fiscal year by a board or program listed under (1) for which recovery is permitted under [House Bill 227, Section 1 (2025)].

(b) "Previous expenses" means attorney fees and costs accrued during the previous fiscal year by a board or program listed under (1) during that fiscal year for which recovery is permitted under [House Bill 227, Section 1 (2025)].

Authorizing statute(s): [House Bill 227, Section 1 (2025)]

Implementing statute(s): [House Bill 227, Section 1 (2025)]

Reasonable Necessity Statement

House Bill 227, Section 1 (2025) established the contingent litigation fund for the purpose of funding litigation costs in excess of $15,000 for boards with three-year average revenue of less than $200,000. The purpose of this funding mechanism is to ensure that boards need not choose between a disciplinary matter and continued operations. *See* 37-1-101(9), MCA. Which boards and programs are covered by the fund may change slightly on an annual basis based on the average revenues. The department proposes to publish a list on its website of these boards and programs on an annual basis. Because the parameters for inclusion and exclusion are statutorily set, rulemaking for this purpose is not required.

The statute vested authority to define distribution parameters with the department. In addition, whether the fee for the contingent litigation fund is charged is dependent on the fund

balance on March 31 of each calendar year. As such, the rule proposes a two-part cost recovery system. By March 31 of each year, eligible expenses will be identified and recovered to the applicable licensing board or program. This ensures that the fees for the fund are not turned off if there are charges which need to be paid by the fund. By the close of each fiscal year, additional eligible expenses will be recovered by a board or program as feasible. This is intended to ease the administrative burden of the fund by preventing recovery across multiple fiscal years to the extent possible. Where the fund holds insufficient money to recover for the boards and programs all eligible expenses, the money will be distributed on a pro rated basis. However, if a board is subject to shutdown pursuant to 37-1-101(9), MCA, if funds are not recovered, that board will take priority in money recovery so that operations may continue.

The boards and programs initially included in the contingent litigation fund include licensees of the boards of alternative health care, architects and landscape architects, athletic trainers, chiropractors, clinical laboratory science practitioners, massage therapy, nursing home administrators, occupational therapy practice, optometry, physical therapy examiners, psychologists, professional engineers and professional land surveyors, radiologic technologists, respiratory care practitioners, speech-language pathologists and audiologists, and veterinary medicine, and the licensing programs of construction blasters, crane operators, fire protection, hearing aid dispensers, pediatric complex care assistants, real property managers, sanitarians, and genetic counselors.

Fiscal Impact

The department proposes the fee for the fund be set at $5 for each license application and renewal of a licensee or license application to a covered board or program. The number of licensees impacted by this fee will vary year to year as the inclusion of boards and programs varies. However, as of the time of this publication, it is estimated that approximately 31,000 licensees will be subject to the fee, for an annual cumulative cost of $155,000.

Small Business Impact

The department expects the direct small business impact, if any, to be minimal. The purpose of the contingent litigation fund is to protect smaller volume licensing boards and programs against unexpected litigation expenses relating to disciplinary matters. While the licensees of boards and programs identified in the statement of reasonable necessity will be required to pay a $5 fee, this is not expected to cause a significant impact to business. Moreover, by insuring against unexpected litigation expenses resulting from discipline, the fee further guards against the possibility that significant fee increases would arise resulting from such cases.

Bill Sponsor Notification

The primary bill sponsor was contacted by electronic mail on April 1, 2025.

Interested Persons

The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

Rule Reviewer

Quinlan L. O'Connor

Approval

Sarah Swanson, Commissioner

MONTANA
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BOARD OF OPTOMETRY
DEPARTMENT OF LABOR AND INDUSTRY

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-137.1

Summary

House Bill 218 (2025) allows for optometrists to perform laser surgical procedures and requires the board to set qualifications for a laser surgery certificate in rule.

Hearing Date and Time

Tuesday, June 3, 2025, at 11:00 a.m.

Virtual Hearing Information

A public hearing will be held via remote conferencing to consider the proposed changes to the rules listed in this notice. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

Join Zoom Meeting: https://mt-gov.zoom.us/j/84542886415

Meeting ID: 845 4288 6415; Password: 519347

Dial by Telephone: +1 646 558 8656

Meeting ID: 845 4288 6415; Password: 519347

Comments

Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received by Friday, June 6, 2025, at 5:00 p.m.

Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Tuesday, May 27, 2025, at 5:00 p.m.

Contact

Department of Labor and Industry
(406) 444-5466
laborlegal@mt.gov
Montana Relay: 711

General Reasonable Necessity Statement

House Bill 218 (2025) establishes the ability of licensed optometrists to perform laser surgical procedures. Section 1 of the bill requires the board set qualifications for obtaining the certificate, including establishing required trainings. In NEW RULE 1, the board is proposing each licensee seeking certification complete a 32-hour course taught by an individual qualified to perform the laser surgical procedures. The board considered existing education programs and regulations in other states with similar scopes of practice in proposing this rule. Additionally, the board is amending its fee schedule, continuing education requirements, and unprofessional conduct rules to implement the bill and address the expanded scope of practice.

Rulemaking Actions

AMEND

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

24.168.401 FEE SCHEDULE

(1) Application fee $175

(2) Annual renewal 175

(3) Endorsement fee 125

(4) TPA <u>or laser surgical</u> certificate application fee 75

(5) Additional standardized fees are specified in ARM 24.101.403.

Authorizing statute(s): 37-1-131, 37-1-134, 37-10-202, MCA

Implementing statute(s): 37-1-134, 37-1-141, 37-1-304, 37-10-302, MCA

24.168.2101 CONTINUING EDUCATION REQUIREMENTS – AUDIT

(1) Licensed optometrists shall complete 36 hours of approved continuing education (CE) every two years:

(a) Up to 12 hours of asynchronous approved CE courses may be counted toward the CE requirement.

(b) Up to 4 hours of practice management approved CE may be counted toward the CE requirement.

(c) The board does not limit or restrict online approved synchronous CE courses.

(2) Licensees holding a laser surgical certificate must complete 8 hours of CE relating to lasers or surgery during each CE cycle.

(3) Licensees holding a laser surgical certificate or a TPA certificate must complete 2 hours of CE related to pain management during each CE cycle.

~~(2)~~(4) The following are exceptions to CE requirements:

(a) A person who graduates from an accredited school of optometry and becomes a licensee within one year of graduation is excused from the CE requirement during the first applicable CE cycle.

(b) A licensee who is enrolled in a residency program accredited by the ACOE is excused from the CE requirement while the licensee is in the residency program and during the first applicable CE cycle.

~~(3)~~(5) The department is authorized to audit CE requirements and shall determine the percentage to audit based on a statistically relevant sampling of the total number of licensees and the compliance rate of past audits. Audits will be conducted in odd-numbered years.

Authorizing statute(s): 37-1-131, 37-1-319, MCA

Implementing statute(s): 37-1-131, 37-1-141, 37-1-306, 37-1-319, 37-1-321, MCA

24.168.2301 UNPROFESSIONAL CONDUCT

(1) It is unprofessional conduct for a licensee or applicant to violate any statute, rule, or standard of care governing their scope of practice, or exceeding the scope of practice for which they are licensed, trained, and educated to perform. The following additionally constitutes unprofessional conduct by licensees or license applicants:

(a) commission of any act of sexual abuse, misconduct, or exploitation whether or not it is related to the licensee's practice of optometry;

(b) allowing one's professional conduct or judgment in the practice of optometry to be directed, managed, or controlled by a person who is not an optometrist or a medical doctor in Montana;

(c) prescribing, selling, administering, distributing, or giving any drug legally classified as a controlled substance or as an addictive or dangerous drug for other than accepted diagnostic or therapeutic purposes or to oneself or a family member;

(d) violating any state or federal law or regulation relating to a drug legally classified as a controlled substance;

(e) obtaining any fee by fraud, deceit, or misrepresentation;

(f) sanctions or disciplinary actions taken by a peer review body, a hospital or other health care institution, or a professional association or society for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in Title 37, chapters 1 and 10, MCA, and administrative rules promulgated thereunder;

(g) surrender of a license or authorization to practice optometry in another state or jurisdiction, or surrender of membership on any staff or in any professional association or society while under disciplinary investigation by any of those authorities or bodies for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in Title 37, chapters 1 and 10, MCA, and administrative rules promulgated thereunder;

(h) failure to respond to board inquiry or furnish information requested by the board, department investigators, or board representatives;

(i) violation of any provision(s) of Title 37, chapter 10, MCA, or the rules and regulations of the board or of an action, stipulation, or agreement of the board;

(j) the designation of any person licensed under Title 37, chapter 10, MCA, other than by the terms "Optometrist," "Doctor of Optometry," or "O.D.";

(k) selling or offering to sell any eyeglasses or lenses for the correction of refractive error, except for over-the-counter readers between the powers of +.75 dioptors to +5.50 dioptors, except on prescription of a licensed optometrist or licensed physician;

(l) providing ophthalmic lenses and materials that do not meet federally established impact resistance standards;

(m) persistently maintaining, in the practice of optometry, unsanitary offices, practices, or techniques; ~~or~~

(n) failing to maintain or permit patient access to accurate patient records for at least five years from the last time the patient was treated~~.~~ ; or

(o) performing laser surgery without a certificate issued under [NEW RULE 1 (ARM 24.168.801)].

Authorizing statute(s): 37-1-131, 37-1-319, 37-10-202, MCA

Implementing statute(s): 37-1-131, 37-1-316, 37-1-319, 37-10-301, MCA

ADOPT

The rule proposed to be adopted is as follows:

NEW RULE 1 (24.168.801) EXPANDED SCOPE OF PRACTICE – SURGICAL CERTIFICATE REQUIREMENTS

(1) Before a licensee may perform surgery, as set forth in 37-10-101, MCA, the licensee must complete an approved course that:

(a) is at least 32 hours in duration;

(b) includes content related to each laser surgical procedure set forth in 37-10-101, MCA; and

(c) is taught by an instructor who is qualified to perform each of the surgical procedures set forth in 37-10-101, MCA.

(2) Licensees shall apply for the laser surgical certification on forms provided by the board.

Authorizing statute(s): 37-1-131, 37-10-202, 37-10-302, MCA

Implementing statute(s): 37-10-301, 37-10-302, MCA

Small Business Impact

The board proposes the fee for the laser surgery certification be set equivalent to the current board fee for a therapeutic pharmaceutical agent certificate. Because this is an optional certification, the exact number of licensees and small businesses impacted by this fee is unknown. However, if every licensed optometrist chose to obtain the certification, it is estimated that approximately 335 licensees will be subject to the fee, for an annual cumulative cost to licensees of $25,125.

Bill Sponsor Notification

The primary bill sponsor was contacted on April 25, 2025, by electronic mail. The bill sponsor had no concerns.

Interested Persons

The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

Rule Reviewer

Jennifer Stallkamp

Approval

Sarah Swanson, Commissioner

Approval

Dr. Ron Benner, President, Board of Optometry

MONTANA
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REGISTER

DEPARTMENT OF LABOR AND INDUSTRY

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-26.1

Summary

Revision of certain rates in the 2025 Montana Prevailing Wage Rates

Hearing Date and Time

Monday, June 2, 2025, at 10:00 a.m.

Virtual Hearing Information

A public hearing will be held via remote conferencing to consider the proposed changes to the rules listed in this notice. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

Join Zoom Meeting: https://mt-gov.zoom.us/j/87995841243

Meeting ID: 879 9584 1243; Password: 636910

Dial by Telephone: +1 646 558 8656

Meeting ID: 879 9584 1243; Password: 636910

Comments

Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728; Helena, Montana 59624. Comments must be received by Friday, June 6, 2025, at 5:00 p.m.

Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Monday, May 26, 2025, at 5:00 p.m.

Contact

Department of Labor and Industry
(406) 444-5466
laborlegal@mt.gov
Montana Relay: 711

Rulemaking Actions

AMEND

The rule proposed to be amended is as follows, stricken matter interlined, new matter underlined:

24.17.127 ADOPTION OF STANDARD PREVAILING RATE OF WAGES

(1) The commissioner's determination of minimum wage rates, including fringe benefits for health and welfare, pension contributions and travel allowance, by craft, classification or type of worker, and by character of project, are adopted in accordance with the Montana Administrative Procedure Act and rules implementing such act.

(a) A notice of proposed adoption of the commissioner's determination is published in the Montana Administrative Register approximately 45 to 60 days prior to adoption ~~according to regular publication dates scheduled in ARM 1.2.419~~.

(b) Adopted wage rates are effective until superseded and replaced by a subsequent adoption.

(c) The wage rates applicable to a particular public works project are those in effect at the time the bid specifications are advertised.

(d) The wage rates proposed and the wage rates adopted are incorporated by reference in respective notices published in the Montana Administrative Register.

(e) The current building construction services rates are contained in the 2025 ~~amended~~ (revised) version of the "Montana Prevailing Wage Rates for Building Construction Services" publication.

(f) The current nonconstruction services rates are contained in the 2025 version of the "Montana Prevailing Wage Rates for Nonconstruction Services" publication.

(g) The current heavy construction services rates are contained in the 2025 ~~amended~~ (revised) version of the "Montana Prevailing Wage Rates for Heavy Construction Services" publication.

(h) The current highway construction services rates are contained in the 2025 (revised) version of the "Montana Prevailing Wage Rates for Highway Construction Services" publication.

(2) The commissioner maintains a mailing list of interested persons and agencies. A copy of any notice, proposed rate of wages, adopted rates, wages or other information are distributed to each addressee. All others may obtain a copy or be included on the mailing list upon request to the address listed in (3). Copies of adopted wage rates are available at reproduction cost for a period of five years following their effective date.

(3) The standard prevailing rates of wages publications are adopted and incorporated by reference. Copies of the rates are available upon request from the Operations Bureau, Employment Standards Division, Department of Labor and Industry, 301 S. Park Avenue, P.O. Box 8011, Helena, MT 59604, (406) 444-6543, or online at https://erd.dli.mt.gov/labor-standards/state-prevailing-wage-rates/.

Authorizing statute(s): 2-4-307, 18-2-409, 18-2-431, MCA

Implementing statute(s): 18-2-401, 18-2-402, 18-2-403, 18-2-406, 18-2-411, 18-2-412, 18-2-413, 18-2-414, 18-2-415, 18-2-422, 18-2-431, MCA

Reasonable Necessity Statement

There is necessity to amend (1)(a) to remove an incorrect cross reference.

The proposed amendments to (1)(e) and (1)(g) striking the word “amended” are necessary because the year of the publication is sufficient to indicate the annual update of the prevailing wage rates required by Title 18, chapter 2, part 4 of the Montana Code Annotated.

It is necessary to further amend (1)(e) to adopt a “2025 (revised) version” of the "Montana Prevailing Wage Rates for Building Construction Services" publication to correct errors identified by the department in the original 2025 publication that was adopted by rule effective January 11, 2025, in the 2025 Montana Administrative Register, Issue 1, in Notice No. 24-17-422.

The listing for Cement Masons and Concrete Finishers is corrected to list “Zone Pay” in place of “Travel and Per Diem,” on page 8 of the publication. The department did not receive sufficient data from employers to establish rates for Drywall Applicators; the listing is corrected to state “No Zone Pay Established” on page 12.

It is necessary to further amend (1)(g) to adopt a “2025 (revised) version” of the "Montana Prevailing Wage Rates for Heavy Construction Services" publication to correct errors identified by the department in the original 2025 publication. The department did not receive sufficient data from employers to establish rates for several occupations; therefore, the department could not establish zone pay or travel pay for those occupations. The rates are corrected as follows: the Zone Pay for Divers is corrected to state “No Zone Pay Established,” and the Depth Pay (Surface Diving) and Diving in Enclosures are deleted on page 10 of the publication; the Zone Pay for Dive Tenders rate is corrected to state “No Zone Pay Established” on page 11; the Travel Pay for Insulation Workers – Mechanical (Heat and Frost) is corrected to state “No Travel Pay Established” on page 11; and the Travel Pay for Line Construction – Equipment Operators is corrected to state “No Travel Pay Established” on page 12.

It is necessary to amend (1)(h) to adopt a “2025 (revised) version” of the "Montana Prevailing Wage Rates for Highway Construction Services" publication to correct errors identified by the department in the original 2025 publication. The department did not receive sufficient data from employers to establish rates for Brick, Block, and Stone Masons; the listing is corrected to state “No Travel Pay Established” on page 6 of the publication.

Small Business Impact

Pursuant to 2-4-111(1), MCA, the small businesses that will probably be affected by the proposed rule change are the small, independent service providers such as plumbers, electricians, carpenters, and cement masons. The agency has determined that the proposed rule change will not create a significant and direct impact on these small businesses.

Bill Sponsor Notification

The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

Interested Persons

The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

Rule Reviewer

Quinlan L. O'Connor

Approval

Sarah Swanson, Commissioner

MONTANA
ADMINISTRATIVE
REGISTER

DEPARTMENT OF LABOR AND INDUSTRY

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-29.1

Summary

Unemployment Insurance - Definitions - Claim Appeal Dates - Redetermination Requests - General Rule Clarification - Implementation of House Bill 652, 2023 Montana Legislature, Chapter 731

Hearing Date and Time

Friday, May 30, 2025, at 1:00 p.m.

Virtual Hearing Information

A public hearing will be held via remote conferencing to consider the proposed changes to the rules listed in this notice. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

Join Zoom Meeting: https://mt-gov.zoom.us/j/86755755076

Meeting ID: 867 5575 5076; Password: 002136

Dial by Telephone: +1 646 558 8656

Meeting ID: 867 5575 5076; Password: 002136

Comments

Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received by Friday, June 6, 2025, at 5:00 p.m.

Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Friday, May 23, 2025, at 5:00 p.m.

Contact

Department of Labor and Industry
(406) 444-5466
laborlegal@mt.gov
Montana Relay: 711

Rulemaking Actions

AMEND

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

24.40.101 DEFINITIONS

In addition to the terms defined in Title 39, chapter 51, MCA, including in 39-51-201 through 39-51-205, and 39-51-1121, MCA, the following definitions apply to this chapter, unless context or a particular rule provides otherwise:

(1) "Accredited by the state of Montana" means the educational institution meets the applicable accreditation standards defined in Title 20, MCA, for institutions in the state of Montana, and the standards defined by the U.S. Department of Education for institutions outside the state of Montana.

(2) "Additional claim" means a claimant reactivated a claim during the claim's benefit year according to ARM 24.40.841, after one or more separations from insured employment since the claim went inactive.

(3) “Available for work” means a claimant is willing and able to accept an offer of suitable work for a minimum of three days a week, and the work days are typical of the claimant’s occupation.

~~(3)~~(4) "Base period employer" means an employer from whom a claimant earned wages for insured employment during the base period of the claim.

~~(4)~~(5) "Benefit determination" means a decision involving any issue related to a claimant's qualification or eligibility for benefits, including monetary, nonmonetary, and separation issues. The term also includes a claimant's overpayment amount and determinations regarding waiver of overpayment recovery.

~~(5)~~(6) "Calendar quarter" means any one of the following quarters in a year:

First - January, February, March

Second - April, May, June

Third - July, August, September

Fourth - October, November, December

~~(6)~~(7) "Child" as used in 39-51-2111, MCA, means an individual under the age of 18, including an emancipated minor, or an adult with a disability who is dependent upon parent(s) or guardian(s) for food, shelter, living expenses, and other necessities.

~~(7)~~(8) "Claim," as used in this chapter and in Title 39, chapter 51, MCA, unless the context or language clearly indicates otherwise, means an initial, additional, or reopened claim for unemployment insurance benefits.

~~(8)~~(9) "Claimant" means a person who has filed a claim, or who is in the process of filing a claim.

~~(9)~~(10) "Days" means a specified number of consecutive calendar days, including Saturdays, Sundays, and holidays except as provided in ARM 24.40.105.

~~(10)~~(11) "Discharge," as used in 39-51-2303, MCA, means a termination of the employment relationship between an employer and ~~a~~ an employee initiated by the employer, for reasons other than a lack of work, whether or not in response to some act or omission on the part of the employee.

~~(11)~~(12) "Educational institution," as used in 39-51-2108, 39-51-2302, and 39-51-2307, MCA, means any public, private, or nonprofit academic, vocational, technical, business, professional, or other school (including a home school), college, or university.

(13) "Full-time work" means insured employment in which an employee is regularly scheduled to work 40 or more hours per week.

~~(12)~~(14) "Good cause" means reasonably compelling circumstances which did not result from any act or omission on the part of the person or business entity claiming good cause and which could not be overcome by reasonable diligence.

~~(13)~~(15) "Inactive claim" means a claimant did not file a request for benefit payments for four consecutive weeks during the claim's benefit year. In order to begin claiming

benefits again when a claim goes inactive, a claimant must follow the procedures pursuant to ARM 24.40.841.

~~(14)~~(16) "Initial claim" means a request filed by a claimant for a determination of the claimant's potential entitlement to and eligibility for benefits.

~~(15)~~(17) "Insured employment" means employment, as defined in 39-51-203, MCA, including federal civilian service, federal military service, and services that constitute employment in any other state, but does not include those services enumerated in 39-51-204, MCA.

~~(16)~~(18) "Issue" means any act, circumstance, or condition, occurring or existing before or during a claimant's benefit period, that has the potential to disqualify or make a claimant ineligible for benefits or to reduce the amount of benefits payable to a claimant. An issue includes both monetary and nonmonetary factors affecting benefit eligibility.

~~(17)~~(19) "Job attached" means a claimant is able and available and has a definite or approximate date of hire or recall to insured employment at 30 or more hours per week.

~~(18)~~(20) "Labor market area" means an economically integrated geographic area within which individuals can reside and find work within a reasonable distance or can readily change jobs without changing their place of residence.

~~(19)~~(21) "Leave of absence" means a cessation of employment due to reasons other than an on-the-job injury, requested by the employee and approved by the employer, with an understanding the employee will be returning to employment for the employer.

~~(20)~~(22) "Leaving work," as used in 39-51-2302, MCA, includes the term "leaving employment," and means:

(a) any permanent, long-term, or indefinite voluntary reduction in an employee's hours of insured regularly scheduled employment of 40 or more hours per week for a particular employer initiated by the employee, whether or not the reduction occurs in response to an act or omission of the employer or is approved by the employer; or

(b) a cessation of employment initiated by the employee, which resulted from the employee's absence from work without an employer-approved leave of absence for:

(i) five or more consecutive work days due to a physical or mental condition, which prevented the employee from performing the essential functions of the job; or

(ii) three or more consecutive work days without the employer's permission for any other reason.

~~(21)~~(23) "Long-term" means that the circumstance in question will or may reasonably be expected to continue to exist substantially unchanged for a period of time exceeding six consecutive weeks.

~~(22)~~(24) "Offset" means the withholding of benefits that would otherwise be payable to a claimant for a compensable week of unemployment in order for the department to recover an overpayment.

~~(23)~~(25) "Online portal" means the department's public-facing online system for administration of the unemployment insurance program.

~~(24)~~(26) "Overpayment" means the amount of benefits paid to a claimant from a state or federal unemployment compensation fund that the a state subsequently determines the claimant was not entitled to receive because of disqualification, ineligibility, or reduction in entitlement under that state's law.

(27) "Part-time availability" pursuant to 39-51-2115, MCA, means a claimant is qualified to seek only part-time insured work and maintain benefits if:

(a) the majority of the claimant's work weeks in the base period were part-time; or

(b) the claimant has a medical diagnosis signed and certified from a licensed and practicing healthcare provider that limits the claimant's ability to perform full-time work.

~~(25)~~(28) "Part-time employment" means insured employment in which an employee is regularly scheduled to work less than 40 hours per week.

~~(26)~~(29) "Pension" means pension payments, retirement benefits, retirement pay, annuity, or similar periodic payment made to an individual based on previous employment. This definition does not include payments from a fund to which the individual was required to make a direct contribution.

~~(27)~~(30) "Permanent layoff" means an indefinite termination of the employment relationship between an employer and an employee initiated by the employer due only to a lack of work for the employee to perform.

~~(28)~~(31) "Reactivated claim" means a claimant did not file a request for benefits for at least four consecutive weeks, and before the end of the benefit year the claimant contacted the department to begin requesting benefits again according to ARM 24.40.841.

~~(29)~~(32) "Recently lived" as used in 39-51-2111, MCA, means having lived with the abusive person for a period of time during the 12-month period immediately preceding the date the claimant left insured employment or was discharged from insured employment due to domestic violence or domestic abuse.

~~(30)~~(33) "Reopened claim" means a claimant reactivated a claim during the claim's benefit year according to ARM 24.40.841 when there were no separations from insured employment since the claim went inactive.

~~(31)~~(34) "Same work" means an offer by an individual's present employer of the same hours, wages, terms of employment, and working conditions.

~~(32)~~(35) "Separation" means any reduction in an employee's hours of insured employment for a particular employer.

~~(33)~~(36) "Similar work" means work in the same occupation or a different occupation that requires essentially the same skills and knowledge as the worker's current or most recent employment but does not mean identical work.

~~(34)~~(37) "State-approved training program" means a program the department determines is reasonably expected to lead to employment for a claimant and meets the criteria outlined by ARM 24.40.903.

~~(35)~~(38) "Suspension" means a pause of the employment relationship between an employer and an employee initiated by the employer for disciplinary, investigative, or other reasons not including a lack of work for the employee to perform.

~~(36)~~(39) "Tax determination" means a decision regarding an employer's contributions, charges, reporting, or other issue determined pursuant to 39-51-1109, MCA.

~~(37)~~(40) "Temporary layoff" means a suspension of the employment relationship between an employer and ~~a~~ an employee initiated by the employer due only to a lack of work for the employee to perform and where the employer intends to recall the employee at such time as work becomes available, except for separations from temporary employment as defined in ARM 24.40.611.

~~(38)~~(41) "Termination" means either a discharge or a permanent layoff.

~~(39)~~(42) "Termination pay" means a payment from an employer to a claimant as the result of discharge or permanent layoff.

(a) Examples of termination pay include:

(i) severance pay;

(ii) separation pay;

(iii) wages in lieu of notice;

(iv) continuation of wages for a designated period of time following cessation of employment or other similar payment; and

(v) payments made under an incentive, employee buy-out, or similar plan designed to produce a general or specific reduction in force by inducing employees to leave voluntarily or in lieu of involuntary termination, whether paid in a lump sum or incrementally over any period of time.

(b) Termination pay may include payment for accrued unused vacation, sick leave, or any other leave paid at or after termination from employment.

~~(40)~~(43) "Union attached" means a claimant is:

(a) able and available for work;

(b) a member in good standing of a labor union that operates an exclusive hiring hall; and

(c) on the out-of-work list at the hiring hall.

~~(41)~~(44) "Valid notice" means a formal, unconditional, specific communication between an individual employee and an employer or authorized agent of an employer, that provides notice of the date an employee intends to leave work voluntarily (quit) or notice of the date an employer intends to terminate an employee from employment.

~~(42)~~(45) "Weekly payment request" means the filing by a claimant of a request for benefit payment or waiting week credit for any week within claimant's benefit year.

(46) "Withdrawal from the labor market" means a claimant is unavailable for work for three or more days per week, unless the claimant is qualified to seek part-time employment pursuant to these rules.

~~(43)~~(47) "Work search contact" means a documented contact by a claimant with an insured employer or authorized agent that hires workers for insured work or insured employment the claimant is qualified for and able to perform, and further described by ARM ~~24.~~24.40.823.

Authorizing statute(s): 39-51-301, 39-51-302, MCA

Implementing statute(s): 39-51-201, 39-51-401, 39-51-504, 39-51-605, 39-51-1218, Title 39, chapter 51, parts 21 through 25, MCA, 39-51-2601, 39-51-3201, 39-51-3202, 39-51-3206, MCA

Reasonable Necessity Statement

The proposed definitions of "available for work" and "withdrawal from the labor market" are necessary to clarify and supplement the statutory language in 39-51-2104, MCA, for benefit eligibility requirements when work is not available to the claimant. The statute only addresses benefit eligibility requirements when work is available to a claimant: "if an individual is unavailable for work for less than 3 days within a week for which work is available, the individual must be paid the weekly benefit amount reduced by one-fifth [. . .]," 39-51-2104(2)(a), MCA, or "[i]f the individual is unavailable for work for 3 days or more, or part of

each of 3 days or more, within a week for which work is available, the individual must be considered unavailable for work for the entire week and is not eligible to receive benefits [. . .] [,]" 39-51-2104(2)(b), MCA. Therefore, the proposed definition of "available for work" is necessary because it defines benefit eligibility requirements when a claimant is available for work, but work is not available to the claimant. The term "available for work" is further clarified by defining the opposite situation, "withdrawal from the labor market." Like the proposed definition of "available for work," the proposed definition of "withdrawal from the labor market" is necessary to address benefit eligibility when the claimant places limitations on being available for work, but work is not available to the claimant.

The proposed definition of "full-time work" is necessary because the term is not defined in statute, and the proposed definition restores the definition in the prior repealed definitions rule, ARM 24.11.204(18), repealed in the 2024 Montana Administrative Register on page 1457, effective July 1, 2024. However, the law makes clear that "[a]n individual is not considered to be unemployed in any week in which the individual works at least 40 hours in employment." 39-51-2101(2), MCA. The definition of "full-time work" helps to clarify and distinguish the definition for the term "part-time work" which is referenced in statutes such as 39-51-2115, MCA, and throughout these rules.

The proposed definition of "part-time availability" pursuant to 39-51-2115, MCA, is necessary because the statute does not contain the medical exception allowing a claimant to seek part-time work and maintain benefits. The proposed definition restores the definition in the prior repealed rule, ARM 24.11.452A(2), repealed in the 2024 Montana Administrative Register on page 1457, effective July 1, 2024.

The proposed amendment to the definition of "work search contact" adding the word "insured" to describe both employers and employment is necessary because a claimant must seek work from an insured employer for a valid work search contact. As noted in ARM 24.40.823(3), seeking uninsured work, such as self-employment or work as an independent contractor, is not a valid work search contact for unemployment insurance purposes. The further amendment to the definition is necessary to correct a typo in the rule number defining "work search contact."

24.40.105 TIME AND PROCEDURE FOR FILING INFORMATION

(1) Interested parties shall file responses to the department's requests for information and questions within eight calendar days. Interested parties shall file responses to any subsequent request for information within two business days. The department's request for information or questions shall include the interested party's specific deadline to file a response.

(2) When a deadline falls on a Saturday, Sunday, or holiday, the filing is due the next business day. Information is filed with the department on the day it is received by the department, not the day it is sent or postmarked. This rule does not apply to

the filing of a request for redetermination under ARM 24.40.833, the filing of a request for hearing under ARM 24.40.201, or the filing of weekly payment requests under ARM 24.40.813.

(3) Interested parties may file responses using the online portal, or by filing responses through the mail.

(4) The department may extend the deadlines for filing information if the interested party shows good cause for the delayed filing.

Authorizing statute(s): 39-51-301, 39-51-302, MCA

Implementing statute(s): 39-51-301, 39-51-603, 39-51-605, Title 39, chapter 51, parts 11 through 13, and 21 through 24, MCA

Reasonable Necessity Statement

The proposed amendment to (2) is necessary to comply with federal requirements to identify a claimant's appeal date, meaning the date a claimant files an appeal of a department determination or redetermination. The appeal date is defined differently in ARM 24.40.833 and ARM 24.40.201 from the dates identified in this rule for filing information with the department. The necessity for this change in appeal date is further explained in the reasonable necessity statement for the proposed amendments to ARM 24.40.201 below.

24.40.201 APPEAL OF DEPARTMENT DETERMINATIONS OR REDETERMINATIONS - REQUEST FOR HEARING

(1) An interested party may appeal a benefit determination or redetermination or tax determination or redetermination by filing a request for hearing. A request for hearing must be in writing, and it must contain the reasons for the appeal, including any information or argument not considered by the department which could affect the outcome of the appealed determination or redetermination.

~~(2) A request for hearing of a benefit redetermination or tax redetermination must be in writing. An interested party may file the request for hearing in person, by mail, or using the online portal as specified by the department.~~

(2) The deadline for an interested party to file a request for hearing is within 10 days of the date of the department's determination or redetermination. If an interested party's deadline to file a request for hearing falls on a weekend or holiday, the deadline is extended to the next business day.

(3) The day the interested party files the request for hearing with the department is the appeal date. A request for hearing is filed with the department on the day it is requested via the online portal, postmarked for mail delivery, or delivered to the department in person. If no postmark is available to determine the appeal date, the date on the request for hearing is the appeal date. If no postmark or date is available for the request for hearing, the department shall consider one day before receipt of the request for hearing as the appeal date.

(4) The department may extend an interested party's deadline for filing a request for hearing if the interested party shows good cause for the delayed filing.

Authorizing statute(s): 39-51-301, 39-51-302, MCA

Implementing statute(s): 2-4-201, 39-51-1109, 39-51-2402, 39-51-2407, MCA

Reasonable Necessity Statement

The proposed amendments including the word "determination" in (1) are necessary because an interested party is not required to request a redetermination, and an interested party is permitted to appeal a determination directly to a hearing under 39-51-2402(3), MCA.

The repeal of (2) is necessary because the relevant information about the request for hearing being in writing is added to (1), and the information about how to file an appeal is in new (2).

New (2) is necessary to provide notice of the 10-day appeal deadline in 39-51-2402(3), MCA, and to comply with federal requirements for unemployment insurance appeal filing dates. According to the U.S. Department of Labor's (USDOL), Employment and Training Administration (ETA), "filing date" is defined as follows in ET Handbook 401:

> Date Appeal Filed. Generally, this will be date on which an appeal was filed by mail or in person. State law may consider a dated postmark or dated private postal meter to be the date of filing. However, a dated postmark is frequently not available. In this case, a date on the appeal request should be used. If this is also not available, then the date one day prior to receipt by the agency may be used.

ET Handbook 401, Unemployment Insurance Reports, 4th Edition, p. V-4-254. Federal requirements further specify how to identify a request for an appeal as follows: "An appeal should be considered to have been filed as of the time of mailing or delivery to any employment security office of any written statement, signed by the appellant or his representative, indicating dissatisfaction with a determination or the party's desire for its review." ET Handbook 382, Measuring UI Lower Authority Quality, 3rd Edition, p. 9. New (2) is

further necessary because it identifies personal delivery, mail, and online as valid means for an interested party to file an appeal.

New (3) is necessary because the department may extend an appeal deadline if an interested party shows good cause for the late appeal under 39-51-2402(3), MCA.

24.40.813 WEEKLY PAYMENT REQUESTS

(1) In order to receive benefit payments, a claimant must file weekly payment requests using the online portal. If the claimant is unable to file online, the claimant may contact the department to request and file weekly payment requests by mail.

(2) Weekly payment requests are timely if the request is filed after the week claimed, and before midnight of the Saturday ~~seven~~ 28 calendar days later. Claimants shall file payment requests in chronological order, starting with the oldest week claimed and ending with the most-recent week claimed.

(3) A claimant must file timely weekly payment requests during the claim adjudication and appeal process to receive benefits or waiting period credit for the intervening week or weeks.

(4) A claimant must completely answer each question on the weekly payment request form and certify that the claimant's responses are true and accurate to the best of the claimant's knowledge.

(5) A claimant must report all hours worked for wages from all work for each week the claimant requests benefit payments. Hours shall be reported for the week the work was performed. A claimant must also report any hours claimed for pay in lieu of work such as holiday pay, or use of vacation, sick, or other paid leave, regardless of whether the use of leave was voluntary or mandatory.

(6) A claimant must report all gross wages earned from all work for each week the claimant requests benefit payments. Gross wages include payment or hours worked or pay in lieu of work such as holiday pay, or use of vacation, sick, or other paid leave, regardless of whether that use was voluntary or mandatory.

(a) Termination pay must be reported as wages for the week in which the termination occurred.

(b) The following payments from an employer must be reported as wages for the week in which the payment was issued:

(i) A bonus, award, incentive, reward, or profit sharing, whether in cash or in the form of securities;

(ii) Accrued unused vacation, sick leave, or other leave without a termination from employment, commonly referred to as a "cash-out" of accrued leave;

(iii) A royalty or residual payment, or payment for a commission;

(c) Payment is issued on the date printed on a physical check, the date of release of electronic funds transfer, or the date cash was tendered. The department may allow up to 14 calendar days for reporting discrepancies.

(7) The department may allow a late payment request if the claimant shows good cause for the late ~~failing~~ filing. If the department determines that the claimant did not have good cause for the delay in filing, benefits or waiting week credit must be denied, and the claimant may be required to reactivate the claim as provided in ARM 24.40.841.

Authorizing statute(s): 39-51-301, 39-51-302, MCA

Implementing statute(s): 39-51-201, Title 39, chapter 51, parts 21 through 23, MCA

Reasonable Necessity Statement

The proposed amendment to (2) is necessary to allow the department and claimants a reasonable time to send and receive paper payment requests through the mail. The seven-day time limit is unrealistic for postal service throughout the state of Montana for both the sending and returning of paper payment requests. Furthermore, the department determined that the rule must include clarification for the order in which claimants shall file payment requests, whether online or through the mail. The proposed amendment to (7) is necessary to correct a grammatical error.

24.40.823 WORK SEARCH CONTACTS

(1) A valid work search contact requires a claimant to directly contact an insured employer, or an authorized agent of an insured employer, and complete a job application or submit a resume that enables the insured employer to contact the claimant to arrange an interview or to commence insured employment. The claimant must possess the prior work experience, knowledge, skills, and abilities to qualify for the specific job opening.

(2) A valid work search contact includes a claimant's registration for work at a temporary employment agency.

(3) A valid work search does not include seeking self-employment, working as an independent contractor, reporting part-time work, or registering with the department's workforce services program.

(4) A claimant shall report at least one valid work search contact with a different insured employer, or for a different position with the same insured employer, for each consecutive week that the claimant requests benefit payments.

(5) The claimant shall retain all work search contact information necessary for verification by the department. The department may request all information relevant to the work search contact.

(6) Claimants who are job attached or union attached may be exempt from work search contact requirements as determined by the department.

Authorizing statute(s): 39-51-301, 39-51-302, MCA

Implementing statute(s): 39-51-2104, 39-51-2115, 39-51-2304, MCA

Reasonable Necessity Statement

The proposed amendment to add the word “insured” to describe both employers and employment is necessary because a claimant must seek work from an insured employer for a valid work search contact. As noted in (3), seeking uninsured work, such as self-employment or work as an independent contractor, is not a valid work search contact for unemployment insurance purposes.

The proposed new (6) is necessary to document and give the public notice of the department’s long-standing procedure of exempting claimants who are job attached or union attached from work search contact requirements.

24.40.831 DETERMINATIONS OF BENEFIT ELIGIBILITY AND QUALIFICATION

(1) In addition to the determination issued under ARM 24.40.809, the department shall adjudicate each issue affecting a claimant's eligibility and qualification for benefits. Issues subject to adjudication include initial eligibility issues and any issues that arise during the period of benefit payments. The department shall issue a written decision for each individual issue affecting the claimant's benefits.

(2) When the department identifies an issue that requires adjudication, including when the information provided by the claimant and employer differs substantially

regarding claimant's eligibility for benefits, the department shall investigate and adjudicate the claim as follows:

(a) The department shall promptly request information from the claimant, the employer, and any other sources of relevant information within eight days pursuant to ARM 24.40.105.

(b) The department shall allow the claimant to review and respond to the information obtained by the department and to submit any rebuttal evidence.

(c) If the claimant fails to provide the requested information within the time period designated by the department, the department may make an adverse ruling against the claimant, including a determination that the claimant is unavailable for work as provided in 39-51-2104, MCA.

(d) If the employer fails to provide information within the time period, the employer may be subject to ARM 24.40.111.

(3) If a claimant is determined ineligible or disqualified for benefits due to an act or circumstance that occurred prior to the effective date of an initial, additional, or reopened claim, the claimant is deemed ineligible or disqualified for benefits as of the date of the act or circumstances that caused the ineligibility or disqualification.

(4) If a claimant is determined to have failed the requirements of benefit eligibility due to an act or circumstance that occurred during the benefit period of a prior or current claim, the claimant is deemed ineligible or disqualified for benefits as of the Sunday of the week the act or circumstance resulting in ineligibility or disqualification occurred.

(5) A claimant who is determined to be ineligible or disqualified for benefits may be required to pay back any benefits received after the date the claimant was determined to be ineligible or disqualified for benefits.

(6) The department shall provide written notice of a determination to all interested parties.

(7) An interested party who disagrees with a department determination on any issue may request redetermination under ARM 24.40.833, or request a hearing under ARM 24.40.201.

Authorizing statute(s): 39-51-301, 39-51-302, MCA

Implementing statute(s): 39-51-605, 39-51-2301, 39-51-2302, 39-51-2303, 39-51-2304, 39-51-2402, 39-51-2507, 39-51-2508, 39-51-2511, 39-51-2602, 39-51-3201, 39-51-3202, 39-51-3206, MCA

Reasonable Necessity Statement

The proposed amendment adding (7) is necessary because a claimant is not required to request a redetermination, and a claimant has the option to appeal a determination directly to a hearing under 39-51-2402(3), MCA.

The proposed amendment removing the required redetermination is intended to aid in faster and more efficient claims processing. Claimants who do not request a redetermination retain ample due process rights to challenge a department determination, including the right to request a hearing under 39-51-2403, MCA and ARM 24.40.201; the right to request an appeal to the Unemployment Insurance Appeals Board under 39-51-2404, MCA; and the right to request judicial review of the final agency decision under 39-51-2410, MCA.

24.40.833 REDETERMINATION

(1) An interested party may request ~~a~~ redetermination of a department determination by submitting a request for redetermination to the department. ~~, by the online portal or mail, together with any~~ The request for redetermination must include additional information the party wishes the department to consider ~~within ten days of the service of the determination~~.

(2) The deadline for an interested party to file a request for redetermination is within 10 days of the date of the department's determination. If an interested party's deadline to file a request for redetermination falls on a weekend or holiday, the deadline is extended to the next business day.

(3) The day the interested party files the request for redetermination with the department is the appeal date. A request for redetermination is filed with the department on the day it is requested via the online portal, requested via phone, postmarked for mail delivery, or delivered to the department in person. If no postmark is available to determine the appeal date, the date on the request for redetermination is the appeal date. If no postmark or date is available for the request for redetermination, the department shall consider one day before receipt of the request for redetermination as the appeal date.

(4) The department may extend an interested party's deadline for filing a request for redetermination if the interested party shows good cause for the delayed filing.

~~(2)~~(5) The department shall provide any additional relevant information to all interested parties and allow the interested parties to review, respond, and submit rebuttal evidence, if any, within eight days of the department's request for rebuttal.

~~(3)~~(6) The department shall provide notice of the redetermination to all interested parties.

(7) An interested party who disagrees with the department's redetermination may file a request for hearing pursuant to ARM 24.40.201.

Authorizing statute(s): 39-51-301, 39-51-302, MCA

Implementing statute(s): 39-51-605, 39-51-2402, MCA

Reasonable Necessity Statement

The proposed amendments to (1) are necessary because an interested party is not required to request a redetermination under 39-51-2402, MCA, and removing this step will aid in more efficient claims processing, as described above in the reasonable necessity statement for ARM 24.40.831. The proposed amendments to (1) also require an interested party to submit additional information that has not been considered by the department with a request for redetermination. The requirement for additional information is designed to encourage claimants to clarify both monetary and nonmonetary claim issues with the department before the hearing process.

The proposed amendments adding new (2) are also necessary in response to the federal requirements for appeal dates, described in detail above in the reasonable necessity statement for ARM 24.40.201.

New (3) is necessary because the department may extend the deadline to request a redetermination if an interested party shows good cause for the late request under 39-51-2402(3), MCA.

New (6) is necessary to clarify that an interested party retains the right to request a hearing after completing the redetermination process.

24.40.903 APPROVAL OF TRAINING BY THE DEPARTMENT ~~– ADDITIONAL TRAINING BENEFITS~~

(1) The department shall consider the curriculum, facilities, staff, and other essentials necessary to insure that a training program has the capacity to achieve the training program's objectives, including appropriate standards and practices regarding satisfactory attendance and performance of trainees. State-approved training programs may include, but are not limited to, the following:

(a) job search workshops;

(b) vocational or technical training, including basic education required as a prerequisite to such training;

(c) vocationally directed academic courses;

(d) job training programs authorized under the Workforce Innovation and Opportunity Act;

(e) training programs designed to upgrade claimant's skills to meet technological or other advances in the claimant's occupational field; or

(f) training programs designed to improve claimant's employability by enhancing claimant's aptitudes or skills for ~~a demand~~ an in-demand occupation.

(2) The department shall consider the following criteria when determining claimant's qualification for training benefits:

(a) claimant's basic work skills, the lack of which may be demonstrated by a history of repeated periods of unemployment;

(b) claimant's history of recent employment that paid federal or state minimum wage;

(c) claimant's lack of formal vocational training or lack of a marketable degree from an educational institution of higher learning;

(d) the diminished value of claimant's skills in the labor market due to changes in technology or major reductions in the industry in which claimant was employed;

(e) claimant's inability to work in the claimant's customary occupation due to documented, long-term physical or mental disabilities;

(f) claimant's reasonable expectation that training will result in higher wages and more secure employment; and

(g) claimant's reasonable expectation for successful completion of the training program, as demonstrated by:

(i) claimant's interest in and aptitude for the course of study to be pursued; and

(ii) claimant's willingness to commit sufficient time to ensure completion of the training.

(3) For up to 30 days prior to the start of a state-approved training program, the department shall consider a claimant to be in training after the department approves the training application, even though training may not have started.

(4) Upon the department's written approval of a claimant for a state-approved training program, the department shall notify the claimant of the availability of additional training benefits.

(5) A claimant in good standing in a state-approved training program may apply to the department for additional training benefits.

(a) Additional training benefits may be paid during break periods of less than 30 days, and weeks including at least one day of training.

(b) Additional training benefits may not exceed an amount equal to ~~26~~ 24 times the claimant's regular weekly benefit amount.

(c) Additional training benefits terminate when the following occurs:

(i) the claimant completes the training program;

(ii) the claimant exhausts the maximum additional training benefits payable;

(iii) the claimant leaves or is expelled from the training program; or

(iv) the claimant becomes eligible to file a new, regular unemployment benefits claim at the end of the benefit year.

(6) The department shall not charge an experience-rated employer's account, as defined by 39-51-1214, MCA, for benefits paid to a claimant who is qualified to receive benefits under this rule.

Authorizing statute(s): 39-51-301, 39-51-302, MCA

Implementing statute(s): 39-51-2116, 39-51-2307, 39-51-2401, MCA

Reasonable Necessity Statement

The proposed amendment to the rule catchphrase is necessary to avoid confusion because the rule pertains to all trainings approved by the department, not just additional training benefits.

The proposed amendment to (5)(b) is necessary to implement House Bill 652, 2023 Montana Legislature, Chapter 731, that reduced a claimant’s maximum benefit amount in amendments to 39-51-2204, MCA.

24.40.925 WORK NO LONGER SUITABLE

(1) Suitable work for an individual may become unsuitable due to circumstances beyond the individual's or employer's control. When adjudicating a work refusal or

separation from work, the department shall consider previously suitable work as not suitable when:

(a) an individual has made a good faith effort to comply with licensing requirements or governing regulations but has failed to pass the required course(s) or licensing exam; or

(b) an individual has submitted to the department an individualized determination of work unsuitability due to the individual's physical or mental disability, which is long-term, indefinite, or permanent, and is certified and signed by a health care provider.

(2) The individual bears the burden of proof that work is not suitable.

Authorizing statute(s): 39-51-301, 39-51-302, MCA

Implementing statute(s): 39-51-2104, 39-51-2304, MCA

Reasonable Necessity Statement

The proposed amendment to (1)(b) is necessary to clarify that this rule is meant to apply to physical or mental disabilities that are of a long-term, indefinite, or permanent nature. The rule does not apply to physical or mental disabilities that are temporary or short-term in nature.

24.40.1501 CHARGING BENEFIT PAYMENTS TO EXPERIENCE-RATED EMPLOYERS – CHARGEABLE EMPLOYERS

(1) If more than one separation of employment exists from the same base period employer, charges or relief of charges will be based on the reason for the most recent separation of employment occurring prior to the effective date of the claim. Any separation of employment occurring after the effective date of a claim will not result in relief of charges on that claim, but may on a subsequent claim, if the reason for separation of employment allows relief of charge.

(2) A claimant does not have reduced hours or wages if:

(a) ~~hours of available work at the time of initial claim and at the date of hire are the same;~~ the claimant performs work for the employer within seven days of the effective date of the claim;

(b) ~~the claimant was employed part time and there is not at least a 10 percent reduction in wages or hours in the four week period following the date of~~

~~claim.~~ the claimant continues to work for the employer after the effective date of the claim; and

(c) the claimant's hours or wages for the four weeks before the claim date are not reduced by 10 percent or more in the four weeks after the claim date.

Authorizing statute(s): 39-51-301, 39-51-302, MCA

Implementing statute(s): 39-51-1214, MCA

Reasonable Necessity Statement

The proposed amendments are necessary to supplement the statutory language that states when an experience-rated employer will not be charged because the employer "continues to provide employment with no reduction in hours or wages;" 39-51-1214(2)(c), MCA. First, the rule is necessary because the statute only applies to experience-rated employers, and reimbursable and government employers are also not charged if they provide continued employment to a claimant without a reduction in the claimant's hours or wages. Second, the amendments to (2) are necessary to correct how the department determines that a claimant does not have a reduction in hours or wages for purposes of charging an employer's account. The proposed amendments to (2)(a) and (b) are necessary to determine that a claimant continues to be employed by an employer, as opposed to a layoff or other type of separation from employment. Subsection (2)(c) is necessary because the department only considers a claimant's wages or hours for the four weeks before and four weeks after the claim date, and the department does not consider a claimant's hours or wages at the date of hire as previously stated in (2)(a). Subsection (2)(c) is further necessary to give employer's notice of the small margin of change allowed to a claimant's wages or hours before and after a claim date that will not result in a charge to an employer's account.

24.40.1609 DUE DATE OF TAXES AND QUARTERLY REPORTS BY EMPLOYERS

(1) Every employer must report employee wage information and pay taxes on those wages to the department each quarter. The department may request any information from the employer necessary for the collection of the tax.

(2) An employer who does not pay any wages during a calendar quarter is not relieved of the duty to submit a quarterly wage report.

(3) Wages become subject to tax when they are actually or constructively paid. Wages must be reported in the calendar quarter they are actually or constructively paid.

Wages are constructively paid if they are credited to the employee's account and set apart for an employee so they may be withdrawn at the employee's discretion.

(4) The quarterly wage reports and tax payments must be sent to the department by the following due dates:

Quarter	Months Covered	Due Date
First:	January, February, March	April 30
Second:	April, May, June	July 31
Third:	July, August, September	October 31
Fourth:	October, November, December	January 31

(5) If a due date falls on a weekend or holiday, the next business day becomes the due date.

(6) If a tax payment or quarterly report is sent after the due date, the department may assess a penalty and interest.

(7) All employers and third-party agents must report quarterly wage information in an electronic format approved by the department. The department may deem quarterly wage reports filed by paper or in any other format not approved by the department as untimely and subject the employer to a late filing penalty, pursuant to 39-51-1301, MCA.

(8) A tax payment may be made by:

(a) cash, check, or money order, accompanied by a department-approved payment voucher;

(b) automated clearing house (ACH) debit;

(c) ACH credit; or

(d) credit card.

Authorizing statute(s): 39-51-301, 39-51-302, MCA

Implementing statute(s): 39-51-603, 39-51-605, MCA

Reasonable Necessity Statement

The proposed amendment to the implementing statutes is necessary to add an additional statute implemented by this rule, 39-51-605, MCA, as required by the Montana Administrative Procedure Act, 2-4-305(3), MCA.

ADOPT

The rule proposed to be adopted is as follows:

NEW RULE 1 (24.40.819) REEMPLOYMENT SERVICES – NOTICE – APPOINTMENTS

(1) The department may identify individual claimants for participation in reemployment services programs. Claimants identified by the department must participate in an appointment with a designated employment services provider to assess the claimant's individual needs. The department shall send the claimant notice of the scheduled appointment.

(2) The department may deny benefits if a claimant fails to participate in the reemployment services program, which failure includes but is not limited to the following:

(a) failure to attend a scheduled appointment with employment services;

(b) failure to notify the employment service provider of the claimant's need to reschedule an appointment; or

(c) failure to comply with appointment or program requirements.

Authorizing statute(s): 39-51-301, 39-51-302, MCA

Implementing statute(s): 39-51-2104, MCA

Reasonable Necessity Statement

The proposed new rule is necessary to comply with the USDOL ETA Unemployment Insurance Program Letter No. 13-15 (UIPL No. 13-15) that details the requirements for state implementation of Unemployment Insurance (UI) Reemployment Services and Eligibility Assessment (RESEA) grants. The RESEA grants allow the department to identify individual claimants who may benefit from participation in reemployment services. The new rule is necessary to provide claimants with notice of the possibility of appointment for participation in reemployment services programs, and the consequences if a claimant fails to participate in the program.

Small Business Impact

Pursuant to 2-4-111(1), MCA, the small businesses that will probably be affected by the proposed rule change are all of the small businesses in Montana that are required to pay unemployment insurance tax on their employees. The agency has determined that the proposed rule change will not create a significant and direct impact on these small businesses.

Bill Sponsor Notification

The primary bill sponsor was contacted on April 21, 2025, by electronic mail.

Interested Persons

The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

Rule Reviewer

Quinlan L. O'Connor

Approval

Sarah Swanson, Commissioner

MONTANA
ADMINISTRATIVE
REGISTER

DEPARTMENT OF LABOR AND INDUSTRY

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-30.1

Summary

2025 Updates to Medical Fee Schedules and Formulary - Implementation of House Bill 143 and Senate Bill 109 of the 2025 Montana Legislature

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Hearing Date and Time

Thursday, May 29, 2025, at 9:00 a.m.

Virtual Hearing Information

A public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

Join Zoom Meeting: https://mt-gov.zoom.us/j/81908578685

Meeting ID: 819 0857 8685; Password: 876600

Dial by Telephone: +1 646 558 8656

Meeting ID: 819 0857 8685; Password: 876600

Comments

Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received by Friday, June 6, 2025, at 5:00 p.m.

Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Thursday, May 22, 2025, at 5:00 p.m.

Contact

Department of Labor and Industry
(406) 444-5466
laborlegal@mt.gov
Montana Relay: 711

Rulemaking Actions

AMEND

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

24.29.617 INITIAL ELECTION---INDIVIDUAL EMPLOYERS

(1) An employer initially electing to be bound as a self-insurer shall provide the following:

(a) a completed application on forms provided by the department;

(b) audited financial statements for the last two years, or an employer that does not have audited financial statements prepared as a normal business practice may, with the prior approval of the department and the concurrence of the guaranty fund, substitute reviewed financial statements if the employer furnishes an increased security deposit approved by the department with the concurrence of the guaranty fund;

(c) proof that it has been in business for a period of not less than three years; however, at the discretion of the department, with the concurrence of the guaranty fund:

(i) a new employer created from the reorganization of a self-insured employer may elect to self-insure even though it has not been in existence for a period of three years. Such election must be made on the effective date of creation of the new employer;

(ii) an employer in business less than three years may be considered if its liability is guaranteed by a parent corporation which has been in business for a period of not less than three years. The department, with the concurrence of the guaranty fund, may accept a guarantee from an employer in lieu of a parental guarantee;

(iii) an employer whose liability is guaranteed by a parent corporation, or an employer shall provide a resolution and an agreement of assumption and guarantee of workers' compensation liabilities on forms prescribed by the department and submit two years of audited financial statements demonstrating the ability to pay compensation benefits;

(d) evidence that it has obtained an insurance policy of specific excess and if required, aggregate excess insurance with policy limits, nature of coverage, and retention amounts acceptable to the department, with the concurrence of the guaranty fund, as required in ARM 24.29.616;

(e) a claims summary of claims incurred in Montana from insurance companies who provided coverage for the preceding three years;

(f) evidence that its internal or contracted claims adjustment service is in compliance with ~~ARM 24.29.804~~ 39-71-107, MCA;

(g) evidence that it has a written safety and loss control program;

(h) a security deposit in an amount required by the department with the concurrence of the guaranty fund;

(i) evidence that internal policies and procedures are satisfactory to administer a self-insurance program.

Authorizing statute(s): 39-71-203, MCA

Implementing statute(s): 39-71-403, 39-71-2101, 39-71-2102, 39-71-2103, MCA

Reasonable Necessity Statement

The proposed amendment is necessary to correct a reference to a repealed rule, ARM 24.29.804, and provide reference to the proper statute, 39-71-107, MCA.

24.29.618 INITIAL ELECTION--EMPLOYER GROUPS

(1) An employer group applicant shall provide the following:

(a) a completed application on forms provided by the department;

(b) a list of individual employers making up the employer group;

(c) a signed copy of the by-laws adopted by the employer group, and all documents pertaining to formation, operation and contractual arrangements, including amendments and addenda;

(d) a copy of an agreement signed by each individual employer showing:

(i) each employer's agreement to accept joint and several liability for all workers' compensation and occupational disease liabilities incurred by the employer group;

(ii) provisions for addition of a new member to the self-insured employer group;

(iii) provisions for withdrawal and expulsion of a member from the self-insured employer group;

(iv) provision for power of attorney between the individual employers and the self-insured employer group;

(v) agreement to be bound by the by-laws and by the employer group's decisions; and

(vi) provisions for assessment for deficits;

(e) a copy of at least the most recent year's audited financial statements, or reviewed financial statements, if audited statements are not prepared as part of the employer's normal business practice, from each member of the employer group. The total premiums payable to the group from employers having reviewed financial statements shall not constitute more than 10 percent of the group's total premium. The department or the guaranty fund may require copies of additional years' audited or reviewed financial statements from the applicant.

(f) evidence that each private employer in the group has been in business for a period of not less than three years;

(g) a claims summary from insurance carriers who provided coverage for claims incurred in Montana for each member of the employer group for the preceding three years;

(h) evidence of specific excess and if required, aggregate excess insurance with policy limits and retention amounts acceptable to the department and guaranty fund;

(i) a security deposit in an amount as required by the department, with the concurrence of the guaranty fund;

(j) evidence of its internal or contracted claims adjustment service in compliance with ~~ARM 24.29.804~~ 39-71-107, MCA;

(k) identification of the financial institution the employer group will use to deposit and withdraw funds for purposes of paying workers' compensation and occupational disease liabilities;

(l) an explanation of how claims reserves will be established on each case and the method of review to assure accuracy and adequacy of the amount of the reserves;

(m) the estimated annual premium to be paid by each member of the employer group;

(n) a projection of annual administrative expenses;

(o) evidence that the employer group has an effective written safety and loss control program;

(p) evidence that internal policies and procedures are satisfactory to operate a group self-insurance program;

(q) resolution by each member authorizing participation in the program;

(r) resolution designating authorized signatures for participation in the program;

(s) a feasibility study conducted by a certified actuary to include an actuarial forecasting of losses and recommended premium levels;

(t) a business plan for the employer group;

(u) pro forma financial statements for each of the first five years of the employer group's operation, to include any assumptions made; and

(v) copies of any contracts including, but not limited to, contracts with an administrative service company, claims examiner, and fiscal agent.

Authorizing statute(s): 39-71-203, MCA

Implementing statute(s): 39-71-403, 39-71-2101, 39-71-2102, 39-71-2103, 39-71-2106, MCA

Reasonable Necessity Statement

The proposed amendment is necessary to correct a reference to a repealed rule, ARM 24.29.804, and provide reference to the proper statute, 39-71-107, MCA.

24.29.721 VALUE OF EMPLOYER-FURNISHED HOUSING

(1) For the purposes of this rule, the following definitions apply:

(a) "Agricultural employer" means an employer whose operations are assigned to an agricultural classification code for workers' compensation purposes. The term is intended to be consistent with the definition of agriculture provided by 15-1-101, MCA.

(b) "Bedroom" means a room in a dwelling that is primarily used for sleeping.

(c) "Dwelling" means a building equipped for human habitation.

(d) "Zero bedrooms" means a dwelling that is an efficiency, dormitory, or a bunkhouse.

(2) For the purposes of calculating wages pursuant to 39-71-123, MCA, the monthly fair rental value, in U.S. dollars, for housing is established for each county in Montana. The rental value is specified in the publications below, available on the department's website or on request:

~~(a) "Montana Workers Compensation Housing, Rent or Lodging Monthly Rates" for the period from April 1, 2018, through June 30, 2024; and~~

~~(b)~~(a) "Montana Workers Compensation Housing, Rent or Lodging Monthly Rates, ~~2024~~ 2025" beginning July 1, ~~2024~~ 2025.

(b) All prior editions of “Montana Workers Compensation Housing, Rent or Lodging Monthly Rates” are available on the department's website.

(3) In recognition of Montana's rural nature and expansive landscape, and the fact that housing supplied by an agricultural employer is likely to be remotely situated and distant from communities with an established rental housing market, housing furnished by an agricultural employer is discounted by 50 percent of the fair rental value for housing established in (2) of this rule, for the county in which the dwelling is located.

(4) If an individual is not currently using the room for sleeping, it is not considered a bedroom for the purpose of this rule.

Authorizing statute(s): 39-71-203, MCA

Implementing statute(s): 39-71-123, MCA

Reasonable Necessity Statement

The proposed repeal and replacement of (2)(a) is necessary because the U.S. Department of Housing and Urban Development (HUD) reported increases to Fair Market Rent rates for both 2024 and 2025. The average increase to HUD’s Fair Market Rent rates in 2024 was 8% and the

average increase for 2025 is 17%. The proposed adoption of new (2)(b) is necessary to simplify the rule and clarify that historical rates can be accessed online.

24.29.801 ACCIDENT REPORTING

(1) A ~~plan No. 1 or~~ plan No. 2 or plan No. 3 employer shall submit the first report of injury/occupational disease form to its insurer within six days of notice of an accident, injury, or occupational disease. If a first report is improperly sent to the department, it will be forwarded to the insurer, if any.

(2) An employer not covered by workers' compensation shall submit the report to the department.

(3) An employee may submit a report to the department.

Authorizing statute(s): 39-71-203, 39-71-307, MCA

Implementing statute(s): 39-71-307, 39-71-603, MCA

Reasonable Necessity Statement

The proposed amendments are necessary because plan No. 2 and plan No. 3 employers are required to file reports to the employers' insurer pursuant to 39-71-307(1), MCA. The rule mistakenly refers to plan No. 1 employers which are self-insured for workers' compensation purposes.

24.29.1401A DEFINITIONS

As used in subchapters 14 and 15, the following definitions apply:

(1) "Acute care hospital" or "hospital" means a health care facility appropriately licensed by the Department of Public Health and Human Services that provides inpatient and outpatient medical services to injured workers experiencing acute illness or trauma. Acute care hospitals are sometimes referred to as regulated hospitals.

(2) "Ambulatory Payment Classification (APC)" means the reimbursement system adopted by the department for outpatient services.

(3) "Ambulatory surgery center (ASC)" means a health care facility that operates primarily for the purpose of furnishing outpatient surgical services to patients.

(4) "Base rate" means the dollar value which is multiplied by the relative weight of the MS-DRG or APC to determine payment.

(5) "Bundling" means the practice of grouping multiple services, procedures, and supplies into one charge item instead of billing each separately.

(6) "CCR," formerly known as "RCC," means the cost-to-charge ratio computed by using the hospital's Medicare cost report and charges.

(7) "CMS" means the Centers for Medicare and Medicaid Services.

(8) "Correct Coding Initiative (CCI)" means the code edits adopted by the department that are used to correct contradictory billing information.

(9) "Current Procedural Terminology (CPT)" codes means codes and descriptors of procedures owned, copyrighted, and published by the American Medical Association.

(10) "Designated Treating Physician" ~~means a provider~~ has the same meaning as a "treating physician," defined in 39-71-116, MCA, who is designated or formally approved by the insurer as the physician who will be coordinating the injured worker's care, according to the criteria in 39-71-1101, MCA.

(11) "Documentation" means written information that is complete, clear, and legible, which describes the service provided and substantiates the charge for the service.

(12) "Durable medical equipment (DME)" means durable medical appliances or devices used in the treatment or management of a condition or complaint, along with associated nondurable materials and supplies required for use in conjunction with the appliance or device. The term does not include an implantable object or device.

(13) "Evidence-based" means use of the best evidence available in making decisions about the care of the individual patient, gained from the scientific method of medical decision-making and includes use of techniques from science, engineering, and statistics, such as randomized controlled trials (RCTs), meta-analysis of medical literature, integration of individual clinical expertise with the best available external clinical evidence from systematic research, and a risk-benefit analysis of treatment (including lack of treatment).

(14) "Facility" or "health care facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, home health agencies, home infusion therapy agencies, hospices, hospitals, long-term care facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers, outpatient centers for surgical services, rehabilitation facilities, residential care

facilities, and residential treatment facilities. The above facilities are defined in 50-5-101, MCA. The term does not include outpatient centers for primary care, infirmaries, provider-based clinics, offices of private physicians, dentists or other physical or mental health care workers, including licensed addiction counselors.

(15) "Functional status" means written information that is complete, clear, and legible, that identifies objective findings indicating the claimant's physical capabilities and provides information about the change in the status as a result of treatment.

(16) "Healthcare Common Procedure Coding System (HCPCS)" means the identification system for health care matters developed by the federal government, and includes level one codes, known as CPT codes, and level two codes that were developed to use for supplies, procedures, or services that do not have a CPT code. These codes also include successor codes for CPT and HCPCS established by the American Medical Association and CMS.

(17) "Implantable" means a system of objects or devices that is made either to replace and act as a missing biological structure, to repair or support a biological structure, or to manage chronic disease processes and that is surgically implanted, embedded, inserted, or otherwise applied. The term also includes any related equipment necessary to install, operate, program, and recharge the implantable.

(18) "Improvement status" means written information that is complete, clear, and legible, which identifies objective medical findings of the claimant's medical status with respect to the treatment plan.

(19) "Inpatient services" means services rendered to a person who has been admitted to a hospital for bed occupancy for purposes of receiving inpatient hospital services. Generally, a patient is considered an inpatient if formally admitted as inpatient with the expectation that the patient will remain at least overnight and occupy a bed even though it later develops that the patient can be discharged or transferred to another hospital and not actually use the hospital bed overnight. The physician or other practitioner responsible for a patient's care at the hospital is also responsible for deciding whether the patient should be admitted as an inpatient.

(20) "Interested party" means:

(a) the "physician" or "provider" as defined by this rule;

(b) the "claimant" or "injured worker"; or

(c) the representative of the injured worker.

(21) "Medicare-Severity Diagnosis Related Group (MS-DRG or DRG)" means the inpatient diagnosis classifications of circumstances where patients demonstrate similar resource consumption, length of stay patterns, and medical severity status that are adopted by the department and are used for billing purposes.

(22) "Nonfacility" means any place not included in this rule's definition of "facility."~~.~~

(23) "Objective medical findings" means medical evidence that is substantiated by clinical findings. Clinical findings include, but are not limited to, range of motion, atrophy, muscle strength, muscle spasm, and diagnostic evidence. Complaints of pain in the absence of clinical findings are not considered objective medical findings.

(24) "Outpatient" means a patient who is not admitted for inpatient or residential care.

(25) "Physician" ~~means those persons identified by 33-22-111, MCA, practicing within the scope of the providers' license.~~ means a healthcare provider who meets the licensure requirements of a "treating physician" as defined by 39-71-116, MCA.

(26) "Prior authorization" means that for those matters identified by ARM ~~24.29.1517~~ 24.29.1621 the provider receives (either verbally or in writing) authorization from the insurer to perform a specific procedure or series of related procedures, prior to performing that procedure.

(27) "Provider" means any health care provider, unless the context in another rule clearly indicates otherwise. "Provider" does not include pharmacists nor does it include a supplier of medical equipment who is not a health care provider.

(28) "Relative Value Unit" or "RVU" represents a unit of measure for medical services, procedures, or supplies. RVU is used in the fee schedule formulas to calculate reimbursement fees and is expressed in numeric units. Those services that have greater costs or value have higher RVUs than those services with lower costs or value.

(29) "Resource-Based Relative Value Scale" or "RBRVS" means the publication titled "Essential RBRVS," published by OptumInsight, Inc.

(30) "Service or services" means treatment including procedures and supplies provided in a facility or nonfacility that is billable under these rules.

(31) "Status indicator (SI)" codes mean CPT codes treated in the same fashion or category, such as packaged services, and apply to outpatient services only.

(32) "Treatment plan" means a written outline of how the provider intends to treat a specific condition or complaint. The treatment plan must include a diagnosis of the condition, the specific type(s) of treatment, procedure, or modalities that will be employed, a timetable for the implementation and duration of the treatment, and the goal(s) or expected outcome of the treatment. Treatment, as used in this definition, may consist of diagnostic procedures that are reasonably necessary to refine or confirm a diagnosis. The treating physician may indicate that treatment is to be performed by a provider in a different field or specialty, and defer to the professional judgment of that provider in the selection of the most appropriate method of treatment; however, the treating physician must identify the scope of the referral in the treatment plan and provide guidance to the provider concerning the nature of the injury or occupational disease.

Authorizing statute(s): 39-71-203, MCA

Implementing statute(s): 39-71-116, 39-71-704, MCA

Reasonable Necessity Statement

The proposed amendments to the definitions of "designated treating physician" and "physician" to include the statutory reference to 39-71-116, MCA, are necessary to provide clarity and consistency of definitions throughout these rules. The updated statutory references are also necessary because the 2025 Legislature passed House Bill 143, 2025 Montana Laws, Chapter 133, which has an immediate effective date upon passage and approval. House Bill 143 updates the statutory definition for "treating physician" under 39-71-116, MCA, and expands the ability of a physician assistant to serve as a treating physician under 39-71-116, MCA. The proposed rule amendment is further necessary because effective October 1, 2025, Senate Bill 109, 2025 Montana Legislature, further updates the definition of "treating physician" to include physical therapists.

The proposed amendment is necessary to correct the definition of "prior authorization" to remove a reference to a repealed rule, ARM 24.29.1517, and provide the correct reference to ARM 24.29.1621.

24.29.1433 FACILITY SERVICE RULES AND RATES

(1) The department adopts the fee schedules provided by this rule to determine the reimbursement for medical services provided by a facility when a person is discharged on or after July 1, 2013. An insurer is obligated to pay the fee provided by the fee schedules for a service, even if the billed charge is less, unless the facility and insurer have a managed care organization (MCO) or preferred provider organization (PPO) arrangement that provides for a different payment amount. The fee schedules are available online at the department's web site and are updated as soon as is reasonably feasible relative to the effective dates of the medical codes as described below. The fee schedules are comprised of the elements listed in 39-71-704, MCA, and the following:

(a) The Montana Status Indicator (SI) Codes;

(b) The Montana unique code, MT003, described in (11)(e) and (12)(f); and

(c) The base rates and conversion formulas are established by the department.

(d) All current and prior instruction sets for services provided starting July 1, 2013, are available on the department's website.

(2) The application of the base rate depends on the date the medical services are provided.

(3) Critical access hospitals (CAH) are reimbursed at 100 percent of that facility's usual and customary charges. CAH is a designation for a facility only. The reimbursement rate for CAH set by this rule applies to facility charges.

(a) Regarding professional services provided at a physical therapy (PT), occupational therapy (OT), and speech therapy (ST) services provided on an outpatient basis must be billed on a UB04 and reimbursed 100 percent of usual and customary. PT, OT, and ST outpatient services may not be billed on the CMS 1500.

(b) All other professional services provided at a CAH must be billed on a CMS 1500 and reimbursed according to the professional fee schedule pursuant to ARM 24.29.1534.

(4) Any services provided by a type of facility not explicitly addressed by this rule or any services using new codes not yet adopted by this rule must be paid at 75 percent of the facility's usual and customary charges.

(5) Any inpatient rehabilitation services, including services provided at a long- term inpatient rehabilitation facility must be paid at 75 percent of that facility's usual and customary charges. All CMS rehabilitation MS-DRGs are excluded from the Montana MS-DRG payment system and instead are paid at 75 percent of the facility's usual and customary charges regardless of the place of service.

(6) DME, prosthetics, and orthotics, excluding implantables, will be paid according to the professional fee schedule pursuant to ARM 24.29.1534 or, if no reimbursement value, ARM 24.29.1523.

(7) Facility billing must be submitted on a CMS Uniform Billing (UB04) form, including the 837-I form when submitting electronically.

(8) Hospitals and ASCs must, on an annual basis, submit to the department data reporting Medicare, Medicaid, commercial, unrecovered, and workers' compensation claims reimbursement in a standard form supplied by the department. The department may in its discretion conduct audits of any facility's financial records to confirm the accuracy of submitted information.

(9) Medical provider services furnished in an acute care hospital, ASC, or other facility setting, whether those professional services are furnished as an employee or as an independent professional, must be billed separately using the CMS 1500 and must be reimbursed using the professional fee schedule pursuant to ARM 24.29.1534, except as provided in (a).

(a) PT, OT, and ST services provided on an outpatient basis must be billed on a UB04 and reimbursed according to the facility fee schedule. These

reimbursements are excluded from any calculation of outlier payments. PT, OT, and ST outpatient services may not be billed on the CMS 1500.

(10) Facility pharmacy reimbursements are made as follows:

(a) If a facility pharmacy dispenses prescription drugs to an individual during the course of treatment in the facility, reimbursement is part of the MS-DRG or APC reimbursement.

(b) If a patient's medications are not included in the MS-DRG or APC service bundle, the reimbursement will be according to ARM 24.29.1529.

(11) The following applies to inpatient services provided at an acute care hospital:

(a) The department may establish the base rate annually.

(i) The base rate effective July 1, ~~2024~~ 2025, is ~~$10,141~~ $10,384.

(ii) All prior base rates for services provided starting July 1, 2013, are available on the department's website.

(b) Payments for inpatient acute care hospital services must be calculated using the base rate multiplied by the Montana MS-DRG weight.

(c) If a service falls outside of the scope of the MS-DRG and is not otherwise listed on a Montana fee schedule, including new codes not yet adopted, reimbursement for that service must be 75 percent of that facility's usual and customary charges.

(d) The threshold for outlier payments is three times the Montana MS-DRG payment amount. If the outlier threshold is met, the outlier payment must be the MS-DRG reimbursement amount plus an amount that is determined by multiplying the charges above the threshold by the sum of 15 percent and the individual hospital's Montana CCR.

(i) For example, if the hospital submits total charges of $100,000, the MS-DRG reimbursement amount is $25,000, and the CCR is 0.50, then the resultant calculation for reimbursement is as follows: The DRG reimbursement amount ($25,000) is multiplied by 3 to set the threshold trigger ($75,000). The threshold trigger ($75,000) is subtracted from the total charges ($100,000) resulting in the amount above the trigger ($25,000). The amount above the trigger ($25,000) is then multiplied by .65 (which is the CCR of .5 plus .15) to obtain the outlier payment ($16,250). The total payment to the hospital in this example would be the DRG reimbursement amount ($25,000) plus the outlier payment ($16,250) = $41,250.

(ii) The department may establish the inpatient outlier amount annually.

(e) Where an implantable exceeds $10,000 in cost, hospitals may seek additional reimbursement beyond the normal MS-DRG payment. Hospitals may seek additional reimbursement by using Montana unique code MT003. Any implantable that costs less than $10,000 is bundled in the implantable charge included in the MS-DRG payment.

(i) Any reimbursement for implantables pursuant to this subsection must be documented by a copy of the invoice for the implantable (or purchase order if it lists the number of items, the wholesale price, and the shipping costs) and the operative report. Insurers are subject to privacy laws concerning disclosure of health or proprietary information.

(ii) Reimbursement is set at a total amount that is determined by adding the actual amount paid for the implantable on the invoice or purchase order for the implantable, plus 15 percent of the actual amount paid for the implantable, plus the handling and freight cost for the implantable. Handling and freight charges must be included in the implantable reimbursement and are not to be reimbursed separately.

(iii) When a hospital seeks additional reimbursement pursuant to this subsection, the implantable charge is excluded from any calculation for an outlier payment.

(iv) Because the decision regarding an implantable is a complex medical analysis, this rule defers to the judgment of the individual physician and facility to determine the appropriate implantable. A payer may not reduce the reimbursement when the medical decision is to use a higher cost implantable.

(f) All facility services provided during an uninterrupted patient encounter leading to an inpatient admission must be included in the inpatient stay, except air and ground ambulance services which are paid separately pursuant to the Montana Ambulance Fee schedule. Air ambulances whose charter and certification is through the federal Department of Transportation will be paid at 100 percent of their usual and customary charges pursuant to federal law.

(g) The following applies to facility transfers when a patient is transferred for continuation of medical treatment between two acute care hospitals:

(i) A hospital receiving a patient is paid the full MS-DRG payment plus any appropriate outliers and add-ons.

(ii) Facility transfers do not include costs related to transportation of a patient to initially obtain medical care. Such reimbursements are covered by ARM 24.29.1409.

(12) The following applies to outpatient services provided at an acute care hospital or an ASC:

(a) The department may establish a base rate annually.

(i) The base rate effective July 1, ~~2024~~ 2025, is ~~$130~~ $133.

(ii) All prior base rates for services provided starting July 1, 2013, are available on the department's website.

(b) The department may establish a base rate annually for ASCs at 75 percent of the hospital outpatient base rate.

(i) The base rate effective July 1, ~~2024~~ 2025, is ~~$98~~ $100.

(ii) All prior base rates for services provided starting July 1, 2013, are available on the department's website.

(c) Payments for outpatient services in a hospital or an ASC are based on the Montana APC system. A single outpatient visit may result in more than one APC for that claim. The payment must be calculated by multiplying the base rate times the APC weight. If an APC code is available, the services must be billed using the APC code. If the APC weight is not listed or if the APC weight is listed as null, reimbursement for that service must be paid at 75 percent of the facility's usual and customary charges. Examples of such services include but are not limited to laboratory tests and radiology. If a service falls outside of the scope of the APC and is not otherwise listed on a Montana fee schedule, reimbursement for that service must be 75 percent of that facility's usual and customary charges.

(d) CCI and MUE code edits must be used to determine bundling and unbundling of charges.

(e) Outpatient medical services include observation in an outpatient status.

(f) Where an outpatient implantable exceeds $500 in cost, hospitals or ASCs may seek additional reimbursement beyond the normal APC payment. In such an instance, the provider may bill using Montana unique code MT003. Any implantable that costs less than $500 is bundled in the APC payment.

(i) Any reimbursement for implantables pursuant to this subsection must be documented by a copy of the invoice for the implantable (or purchase order if it lists the number of items, the wholesale price, and the shipping cost) and the operative report. Insurers are subject to privacy laws concerning disclosure of health or proprietary information.

(ii) Reimbursement is set at a total amount that is determined by adding the actual amount paid for the implantable on the invoice or purchase order for the implantable, plus 15 percent of the actual amount paid for the implantable, plus the handling and freight cost for the implantable.

Handling and freight charges must be included in the implantable reimbursement and are not to be reimbursed separately.

(g) The following applies to patient transfers from an ASC to an acute care hospital:

(i) An ASC transferring a patient is paid the APC reimbursement.

(ii) The acute care hospital is paid the MS-DRG or the APC reimbursement, whichever is applicable.

(iii) Facility transfers do not include costs related to transportation of a patient to initially obtain medical care. Such reimbursements are covered by ARM 24.29.1409.

Authorizing statute(s): 39-71-203, MCA

Implementing statute(s): 39-71-704, MCA

Reasonable Necessity Statement

The proposed amendments to (11)(a)(i), (12)(a)(i) and (12)(b)(i) are necessary to update the base rates for services as part of the department's annually established medical fee schedules required by 39-71-704(2), MCA.

24.29.1538 CONVERSION FACTORS

(1) The conversion factors established by the department for goods and services, other than anesthesia services are:

(a) ~~$60.47~~ $61.09 on or after July 1, ~~2024~~ 2025.

(b) All prior conversion factors for services provided starting July 1, 2013, are available on the department's website.

(2) The conversion factors established by the department for anesthesia services are:

(a) ~~$65.73~~ $71.78 on or after July 1, ~~2024~~ 2025.

(b) All prior conversion factors for services provided starting July 1, 2013, are available on the department's website.

(3) The department will annually survey up to the top five insurers or third-party administrators providing group health plan coverage in Montana to collect

information on the conversion factors paid during the current year for professional health care services in Montana. The term group health plan has the same meaning as provided in 33-22-140, MCA.

Authorizing statute(s): 39-71-203, MCA

Implementing statute(s): 39-71-704, MCA

Reasonable Necessity Statement

The proposed amendments to (1)(a) and (2)(a) are necessary to update the conversion factors as part of the department's annually established medical fee schedules required by 39-71-704(2), MCA.

24.29.1601 DEFINITIONS

As used in this subchapter, the following definitions apply:

(1) "Claim" means an injury or occupational disease where:

(a) liability has been accepted by the insurer; or

(b) payment has been made by the insurer pursuant to:

(i) 39-71-608, MCA;

(ii) 39-71-615, MCA; or

(iii) any other reservation of rights.

(2) "Evidence-based" means use of the best evidence available in making decisions about the care of the individual patient, gained from the scientific method of medical decision-making and includes use of techniques from science, engineering, and statistics, such as randomized controlled trials (RCTs), meta-analysis of medical literature, integration of individual clinical expertise with the best available external clinical evidence from systematic research, and a risk-benefit analysis of treatment (including lack of treatment).

(3) " Formulary" means the list of drugs for which prior authorization is generally not needed, as adopted and automatically updated pursuant to ARM 24.29.1616.

(4) "Formulary rules" means:

(a) ARM 24.29.1601;

(b) ARM 24.29.1607;

(c) ARM 24.29.1616;

(d) ARM 24.29.1624;

(e) ARM 24.29.1631;

(f) ARM 24.29.1645; and

(g) ARM 24.29.1648.

(5) "Insurer" means compensation plan No. 1, plan No. 2, and plan No. 3.

(6) "Legacy claim" means a workers' compensation or occupational disease claim with an occurrence date before April 1, 2019.

(7) "Medical director" means a person who is an employee of, or contractor to, the department, and who is responsible for the independent medical review of requests for treatment(s) or procedure(s), when those requests are denied, and whose responsibility will also include other areas to be determined by the department. A person serving as a medical director must be a physician licensed by the state of Montana under Title 37, chapter 3, MCA.

(8) "Montana Guidelines" are the Montana utilization and treatment guidelines adopted by the department in ARM 24.29.1611.

(9) "ODG drug formulary" means the ODG Workers' Compensation Drug Formulary published by MCG Health, LLC.

(10) "PBM" mean the pharmacy benefits manager used by an insurer to help the insurer implement the formulary's use in the insurer's claims handling processes.

(11) "Primary medical services" has the same meaning as provided by 39-71-116, MCA.

(12) "Prior authorization" means the interested party receives prior authorization (either verbally or in writing) from the insurer:

(a) to perform treatment for those cases identified by ARM 24.29.1621; or

(b) to obtain medications for those cases identified in the formulary rules as requiring prior authorization.

(13) "Rebuttable presumption" means that the Montana Guidelines, as adopted in ARM 24.29.1611, are presumed to be compensable medical treatment for an injured worker. The presumption can be rebutted by a preponderance of credible medical evidenced-based material and medical reasons to justify that the medical treatment(s) or procedure(s) that require prior authorization are reasonable and necessary care for the injured worker.

(14) "Refill" means the dispensing of additional medications after the initial number of doses authorized by a written prescription have been dispensed, where the prescription expressly indicates that a certain number of refills are allowed without the need for another written prescription.

(15) "Supportive services" means those treatments, therapies, and related services that are designed to safely, effectively, and compassionately assist an injured worker transition from an existing medication regimen.

(16) "Treating physician" has the same meaning as provided by ~~ARM 24.29.1401A~~ 39-71-116, MCA.

(17) "Treatment" has the same meaning as provided by ARM 24.29.1401A.

(18) "Treatment plan" means a written outline of how the provider intends to treat a specific condition or complaint. A treatment plan includes a transition plan provided for in ARM 24.29.1631. A treatment plan must be made in accordance with the Montana Guidelines adopted in ARM 24.29.1611 and made in accordance with any insurer authorized treatments or procedures.

Authorizing statute(s): 39-71-203, 39-71-704, MCA

Implementing statute(s): 39-71-704, MCA

Reasonable Necessity Statement

The proposed amendment is necessary to correct the definition of “treating physician” from the cited rule to the proper statutory reference in 39-71-116, MCA. The proposed amendment is further necessary for consistency and to implement the 2025 Legislature’s House Bill 143 and Senate Bill 109 as described in the Reasonable Necessity Statement for ARM 24.29.1401A above.

24.29.1616 INCORPORATION BY REFERENCE AND UPDATES TO THE FORMULARY

(1) The department will annually undertake formal rulemaking to select a formulary. The formulary may be any one of the following:

(a) a formulary published by a commercial vendor;

(b) a formulary published by another state for use in workers' compensation and occupational disease claims; or

(c) a formulary specially developed by the department.

(2) The department adopts and incorporates by reference its formulary as follows:

(a) for prescriptions written on or after July 1, ~~2024~~ 2025, the April ~~2024~~ 2025 edition of the ODG Drug formulary; and

(b) all prior ODG drug formulary lists starting January 2019, are available on the department's website or by contacting the department to request a copy.

(3) Pursuant to 2-4-307, MCA, the automatic monthly updates of the annually adopted edition of the formulary are incorporated by reference without additional rulemaking, and are applicable as of the date the update is posted on the department's web site.

(4) The formulary is available on the department's website and from the vendor, via electronic access, at a subscription rate charged by the vendor, which may include supplemental information or materials that are not incorporated by reference. The vendor may be contacted at www.mcg.com/odg, and at ODG by MCG Health, 3006 Bee Caves Road, Suite A250, Austin, TX 78746.

(5) Archived versions of the formulary will be maintained by the department for five years from the date of the adoption of the formulary.

Authorizing statute(s): 39-71-203, 39-71-704, MCA

Implementing statute(s): 39-71-704, MCA

Reasonable Necessity Statement

The proposed amendments to (2)(a) are necessary to update the department's commercial drug formulary which is adopted and must be annually updated under 39-71-704(3)(b), MCA. The automatic monthly update process for the department's commercial drug formulary is expressly adopted in 2-4-307(8), MCA.

24.29.3105 PETITION TO REOPEN MEDICAL BENEFITS

(1) A party wishing to reopen medical benefits terminated by statute must submit a petition to reopen to the department on the form provided by the department. A claim may go through the petition process, including initial petition and biennial reviews, one time.

(2) The department shall review a petition to reopen. If the petition is not complete or not compliant with 39-71-717, MCA, it will be returned to the petitioner. The date

the department accepts a complete and compliant petition to reopen begins the 60-day medical review period.

~~(2)~~(3) The department will provide notice of the petition to reopen to the insurer. The parties must provide claim records to the department and the other party within 14 days of the notice. Records not received in that time will not be considered.

~~(3)~~(4) An insurer may dispute the presumption that a petition to reopen relates to a compensable claim. The dispute must be made within 14 days of the notice of the petition to reopen from the department.

~~(4)~~(5) The petition to reopen may be reviewed solely by the department's medical director upon a mutual, irrevocable agreement from the injured worker and the insurer. The medical director will issue a report explaining the rationale for the decision pursuant to statutory criteria.

~~(5)~~(6) If the injured worker and insurer agree to reopen medical benefits, they may submit a joint petition to reopen. The petition to reopen form must be completed, but claim records need not be provided. The reopened benefits are subject to biennial review.

~~(6)~~(7) Any other petition to reopen will be reviewed by a three-member panel. Each panel member must prepare a report evaluating the statutory reopening criteria. The medical director will issue a report on behalf of the panel explaining the rationale for the decision.

Authorizing statute(s): 39-71-203, MCA

Implementing statute(s): 39-71-717, MCA

Reasonable Necessity Statement

The proposed amendments adopting (2) are necessary to clarify the department's review of a petition to reopen medical benefits pursuant to 39-71-717, MCA. Reference to the statute, 39-71-717, MCA, is necessary because it contains more specific requirements for a petition to reopen medical benefits including the type of medical benefits that may be reopened, 39-71-717(1), MCA, and the statute of limitations for filing a petition to reopen, 37-71-717(5), MCA. The proposed amendments further clarify when the 60-day medical review period begins, as referenced in 39-71-717(8), MCA.

Small Business Impact

Pursuant to 2-4-111(1), MCA, the small businesses that will probably be affected by the proposed rule change to ARM 24.29.721 are all small-business housing providers including independent landlords, small rental and property management companies, and small hotels and motels. The agency has determined that the proposed rule change will have a positive significant and direct impact on small businesses because the proposed change to the rates is based on HUD's Fair Market Value average rate increase for 2025 of 17%.

Bill Sponsor Notification

The primary bill sponsors were contacted on April 15, 2025, and April 24, 2025, by electronic mail.

Interested Persons

The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

Rule Reviewer

Quinlan L. O'Connor

Approval

Sarah Swanson, Commissioner

MONTANA
ADMINISTRATIVE
REGISTER

DEPARTMENT OF LIVESTOCK

NOTICE OF ADOPTION

MAR NOTICE NO. 2025-18.2

Summary

Amendment of ARM 32.3.435 pertaining to testing within the DSA

Previous Notice(s) and Hearing Information

On March 28, 2025, the Department of Livestock published MAR Notice No. 2025-18.1 pertaining to the proposed amendment of the above-stated rule in the 2025 Montana Administrative Register, Issue Number 6. No public hearing was scheduled or requested.

Final Rulemaking Action – Effective May 10, 2025

AMEND AS PROPOSED

The agency has amended the following rule as proposed:

32.3.435 TESTING WITHIN THE DSA

Statement of Reasons

No comments were received.

Contact

Lindsey Simon
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MDOLcomments@mt.gov
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Rule Reviewer

Lindsey Simon, Legal Counsel

Approval

Michael Honeycutt, Executive Officer

MONTANA
ADMINISTRATIVE
REGISTER

DEPARTMENT OF LIVESTOCK

NOTICE OF ADOPTION

MAR NOTICE NO. 2025-19.2

Summary

Amendment of ARM 32.8.101 pertaining to the adoption and incorporation by reference of milk sanitation documents

Previous Notice(s) and Hearing Information

On March 28, 2025, the Department of Livestock published MAR Notice No. 2025-19.1 pertaining to the proposed amendment of the above-stated rule in the 2025 Montana Administrative Register, Issue Number 6. No public hearing was scheduled or requested.

Final Rulemaking Action – Effective May 10, 2025

AMEND AS PROPOSED

The agency has amended the following rule as proposed:

32.8.101 DEFINITIONS AND ADOPTION OF GRADE A PASTEURIZED MILK ORDINANCE AND ASSOCIATED DOCUMENTS

Statement of Reasons

No comments were received.

Contact

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Rule Reviewer

Lindsey Simon, Legal Counsel

Approval

Michael Honeycutt, Executive Officer

MONTANA
ADMINISTRATIVE
REGISTER

DEPARTMENT OF LIVESTOCK

NOTICE OF ADOPTION

MAR NOTICE NO. 2025-20.2

Summary

Amendment of ARM 32.2.404, 32.18.202, and 32.18.208 pertaining to brands enforcement fees and grazing permits

Previous Notice(s) and Hearing Information

On March 28, 2025, the Department of Livestock published MAR Notice No. 2025-20.1 pertaining to the proposed amendment of the above-stated rules in the 2025 Montana Administrative Register, Issue Number 6. No public hearing was scheduled or requested.

Final Rulemaking Action – Effective May 10, 2025

AMEND AS PROPOSED

The agency has amended the following rules as proposed:

32.2.404 BRANDS ENFORCEMENT DIVISION FEES

32.18.202 ADJOINING COUNTY GRAZING PERMITS

32.18.208 DEEDED LAND GRAZING PERMITS

Statement of Reasons

No comments were received.

Contact

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Rule Reviewer

Lindsey Simon, Legal Counsel

Approval

Michael Honeycutt, Executive Officer

MONTANA
ADMINISTRATIVE
REGISTER

BOARD OF MILK CONTROL
DEPARTMENT OF LIVESTOCK

NOTICE OF ADOPTION

MAR NOTICE NO. 2025-96.2

Summary

Amendment of ARM 32.24.480 pertaining to milk producer pricing

Previous Notice(s) and Hearing Information

On March 28, 2025, the Board of Milk Control published MAR Notice No. 2025-96.1 pertaining to the proposed amendment of the above-stated rule in the 2025 Montana Administrative Register, Issue Number 6. No public hearing was scheduled or requested.

Final Rulemaking Action – Effective June 1, 2025

AMEND AS PROPOSED

The agency has amended the following rule as proposed:

32.24.480 PRODUCER PRICING RULES

Statement of Reasons

No comments were received.

Contact

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Rule Reviewer

Lindsey Simon, Legal Counsel

Approval

Ken Bryan, Chair, Board of Milk Control

MONTANA
ADMINISTRATIVE
REGISTER

DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

NOTICE OF ADOPTION

MAR NOTICE NO. 2025-168.2

Summary

Amendment of ARM 37.47.101, 37.47.102, 37.47.106, and 37.47.111 and repeal of ARM 37.47.107, 37.47.901, 37.47.904, and 37.47.905 pertaining to adult protective services

Previous Notice(s) and Hearing Information

On February 21, 2025, the Department of Public Health and Human Services published MAR Notice No. 2025-168.1 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules in the 2025 Montana Administrative Register, Issue Number 4.

The public hearing was held on March 13, 2025.

Final Rulemaking Action – The department intends to apply these rule amendments retroactively to Oct 1, 2023.

AMEND AS PROPOSED

The department has amended the following rules as proposed:

37.47.101 ADULT PROTECTIVE SERVICES: PURPOSE

37.47.102 ADULT PROTECTIVE SERVICES: DEFINITIONS

37.47.106 ADULT PROTECTIVE SERVICES: AVAILABLE SERVICES

37.47.111 ADULT PROTECTIVE SERVICES: OBTAINING SERVICES

REPEAL

The department has repealed the following rules as proposed:

37.47.107 ADULT PROTECTIVE SERVICES, ELIGIBILITY

37.47.901 HOME ATTENDANT SERVICES, DEFINITION

37.47.904 HOME ATTENDANT SERVICES, ELIGIBILITY

37.47.905 HOME ATTENDANT SERVICES, SERVICES AVAILABLE

Statement of Reasons

No comments were received.

Contact

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Fax: (406) 444-9744

Rule Reviewer

Mark Prichard

Approval

Charles T. Brereton, Director
Department of Public Health and Human Services

MONTANA
ADMINISTRATIVE
REGISTER

DEPARTMENT OF REVENUE

NOTICE OF ADOPTION

MAR NOTICE NO. 2025-42.2

Summary

Amendment of ARM 42.20.454 to lessen certain procedural burdens for a property owner during an informal classification and appraisal review and clarify department processes for it to consider sale price as an indication of market value for the owner's property

Previous Notice(s) and Hearing Information

On March 7, 2025, the Department of Revenue published MAR Notice No. 2025-42.1 pertaining to the public hearing on the proposed amendment of the above-stated rule in Issue 5 of the 2025 Montana Administrative Register.

On March 31, 2025, the department held a public hearing to consider the proposed rulemaking. No interested persons appeared at the hearing.

Final Rulemaking Action – Effective May 10, 2025

AMEND AS PROPOSED

The department has amended the following rule as proposed:

42.20.454 CONSIDERATION OF SALE PRICE AS AN INDICATION OF MARKET VALUE

Statement of Reasons

No oral or written comments were received.

Contact

Todd Olson, Rule Reviewer - Department of Revenue, Legal Services Office
(406) 444-7905
todd.olson@mt.gov

Rule Reviewer

Todd Olson

Approval

Brendan Beatty, Director of Revenue

MONTANA
ADMINISTRATIVE
REGISTER

SECRETARY OF STATE

NOTICE OF ADOPTION

MAR NOTICE NO. 2025-24.2

Summary

This rulemaking proposes an extension of the waiver for state agency filing fees related to publication in the Montana Administrative Register.

Previous Notice(s) and Hearing Information

On February 21, 2025, the Secretary of State published MAR Notice No. 2025-24.1 pertaining to the public hearing on the proposed amendment of the below-stated rule in Issue 4 of the 2025 Montana Administrative Register. A public hearing was held on March 17, 2025.

Final Rulemaking Action – Effective May 10, 2025

AMEND AS PROPOSED

The agency has amended the following rule as proposed:

1.4.107 AGENCY FILING FEES

Statement of Reasons

No comments were received.

Contact

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Rule Reviewer

Austin Markus James

Approval

Christi Jacobsen, Secretary of State

MONTANA
ADMINISTRATIVE
REGISTER

DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

SUPPLEMENTAL NOTICE OF RULEMAKING

MAR NOTICE NO. 37-1044

Summary

Adoption of NEW RULES I through XCVI and repeal of ARM Title 37, chapter 95 pertaining to licensure of day care facilities

Previous Notice(s) and Hearing Information

On October 20, 2023, the Department of Public Health and Human Services (department) published MAR Notice No. 37-1044, pertaining to the public hearing on the proposed adoption and repeal of the above-referenced rules at page 1297 of the 2023 Montana Administrative Register, Issue Number 20.

On April 12, 2024, the department published the notice of adoption and repeal of the above-stated rules at page 738 of the 2024 Montana Administrative Register, Issue Number 7.

Reason for Supplemental Notice

The department is publishing this supplemental notice to confirm the effective date of the adoption of NEW RULES I through XCVI and the repeal of ARM Title 37, chapter 95. In paragraph 5 of the notice of adoption and repeal, the department stated that, in the event that the Children, Families, Health, and Human Services Interim Committee did not withdraw its written objection to the rulemaking pursuant to 2-4-406(2), MCA (which it did not do), the effective date would be postponed until the day after the final adjournment of the regular session of the 69th Legislature. This delayed effective date is pursuant to 2-4-306(4)(c), MCA. The department stated that it would publish a notice confirming the effective date. Accordingly, the department is confirming that May 1, 2025 is the effective date for the adoption and repeal of the above-stated rules.

The department is also publishing this supplemental notice to correct a clerical error referencing NEW RULE LXXXI (37.96.1001) in NEW RULE VI (37.96.108), NEW RULE LXX (37.96.902), NEW RULE LXXI (37.96.903), NEW RULE LXXII (37.96.904), NEW RULE LXXIII

(37.96.907), NEW RULE LXXIV (37.96.908), NEW RULE LXXV (37.96.909), NEW RULE LXXVI (37.96.910), and NEW RULE LXXVII (37.96.913). The correct cross-reference in these rules is NEW RULE LXXXII (37.96.1002).

Contact

Bailey Yuhas
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Final Rulemaking Actions – Effective May 1, 2025

ADOPT AS CORRECTED

The rules adopted in corrected form are as follows, deleted matter interlined, new matter underlined:

37.96.108 RCE AND FFN APPLICATION REQUIREMENTS

(1) RCE and FFN providers must meet the following requirements to be registered under this chapter:

(a) be 18 years old or older;

(b) limit the care they provide to a period of less than 24 consecutive hours;

(c) have satisfactory results of background checks for the applicant as set forth in ARM ~~37.96.1001~~ 37.96.1002. If care is provided in the applicant's home, all adults who reside there must also have satisfactory results of background checks;

(d) complete orientation approved by the department that includes health and safety training; and

(e) complete a department-approved health and safety review course at least every three years.

(2) In addition to the requirements in (1), FFN providers must hold current certification for infant, child, and adult CPR, infant choking response, and pediatric first aid. CPR certification must be completed in a hands-on setting.

(3) For payment purposes, subsidized care provided in a child's home can only be paid to FFN and RCE providers, pursuant to ARM 37.80.208.

Authorizing statute(s): 52-2-704, MCA

Implementing statute(s): 52-2-703, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, MCA

37.96.902 DIRECTOR RESPONSIBILITIES AND QUALIFICATIONS

(1) All facilities except RCEs must have a director.

(a) For the purposes of this rule, FFN providers are considered a director.

(2) A director and their program staff are responsible for the health, safety, supervision, protection, and guidance of the children in care. The director is responsible for operating the child care program at all times.

(3) A director must demonstrate knowledge and ability to carry out day-to-day operations and is responsible for being on-site at the facility, unless there is a site director, designated staff member, or substitute filling the on-site role.

(4) Directors must meet the following qualifications:

(a) be at least 18 years old;

(b) have satisfactory results of background checks as set forth in ARM ~~37.96.1001~~ 37.96.1002;

(c) be current on the Practitioner Registry;

(d) have current CPR and pediatric first aid certification;

(e) successfully complete orientation training; and

(f) have a combination of education, training, other licensing, or experience in working with children to demonstrate an ability to fulfill the director responsibilities for the licensed or registered facility type, subject to approval through the Practitioner Registry or to department approval.

(5) If the director will be absent from the facility for more than 30 continuous days, the director must notify the department in writing of the individual who has been appointed as the designee. The appointed designee must meet all the requirements of this rule.

(6) The director must ensure compliance with all applicable administrative rules within this chapter.

(7) The director or designee must review every incident or accident causing injury to a child resulting in medical or dental care and document the appropriate corrective action taken to avoid a reoccurrence.

Authorizing statute(s): 52-2-704, MCA

Implementing statute(s): 52-2-702, 52-2-704, 52-2-723, 52-2-731, MCA

37.96.903 SITE DIRECTOR RESPONSIBILITIES AND QUALIFICATIONS

(1) Site director is an optional role. Providers may employ site directors when they have multiple facilities in geographically dispersed locations. An individual may only serve as a site director at one location or site. Site directors plan and implement facility services under the oversight of the director/owner.

(2) Site directors must meet the following qualifications:

(a) be at least 18 years old;

(b) have satisfactory results of background checks as set forth in ARM ~~37.96.1001~~ 37.96.1002;

(c) be current on the Practitioner Registry;

(d) have current CPR and pediatric first aid certification;

(e) successfully complete orientation training;

(f) complete on-the-job training; and

(g) have a combination of education, training, other licensing, or experience in working with children to demonstrate an ability to fulfill the site director responsibilities for the licensed or registered facility type, subject to approval through the Practitioner Registry or to department approval.

(3) The site director is responsible for being on-site during the facility's operating hours and providing regular supervision and mentoring of lead teachers, teachers, substitutes, support staff, and volunteers.

(4) One person may be the director and site director.

(5) A site director may also serve as a lead teacher.

(6) The director absence requirements in ARM 37.96.902 apply to site directors.

Authorizing statute(s): 52-2-704, MCA

Implementing statute(s): 52-2-702, 52-2-704, 52-2-723, 52-2-731, MCA

37.96.904 LEAD TEACHER RESPONSIBILITIES AND QUALIFICATIONS

(1) Lead teacher is an optional role.

(2) Lead teachers are responsible for facility activity planning and delivery.

(3) A lead teacher must:

(a) be at least 18 years old;

(b) have satisfactory results of background checks as set forth in ARM ~~37.96.1001~~ 37.96.1002;

(c) complete on-the-job training;

(d) be current on the Practitioner Registry;

(e) have current CPR and pediatric first aid certification;

(f) successfully complete required orientation training; and

(g) have a combination of education, training, other licensing, or experience in working with children to demonstrate an ability to fulfill the lead teacher responsibilities for the licensed or registered facility type, subject to approval through the Practitioner Registry or to department approval.

Authorizing statute(s): 52-2-704, MCA

Implementing statute(s): 52-2-702, 52-2-704, 52-2-723, 52-2-731, MCA

37.96.907 TEACHER RESPONSIBILITIES AND QUALIFICATIONS

(1) Teacher is an optional role.

(2) Teachers help a lead teacher or director provide instructional support to children and implement developmentally appropriate programming.

(3) Teachers must:

(a) receive oversight and guidance from a lead teacher, site director, or director;

(b) be at least 16 years old;

(c) have satisfactory results of background checks as set forth in ARM ~~37.96.1001~~ 37.96.1002;

(d) complete on-the-job training;

(e) be current on the Practitioner Registry;

(f) have current CPR and pediatric first aid certification; and

(g) successfully complete required orientation training.

Authorizing statute(s): 52-2-704, MCA

Implementing statute(s): 52-2-704, 52-2-723, 52-2-731, MCA

37.96.908 SUBSTITUTE RESPONSIBILITIES AND QUALIFICATIONS

(1) Substitutes must:

(a) have satisfactory results of background checks as set forth in ARM ~~37.96.1001~~ 37.96.1002;

(b) meet the age requirement for the role for which they are substituting;

(c) complete on-the-job training;

(d) be current on the Practitioner Registry;

(e) have current CPR and pediatric first aid certification; and

(f) successfully complete required orientation training.

Authorizing statute(s): 52-2-704, MCA

Implementing statute(s): 52-2-704, 52-2-723, 52-2-731, MCA

37.96.909 TRAINEE RESPONSIBILITIES AND QUALIFICATIONS

(1) Trainees must:

(a) have satisfactory results of background checks as set forth in ARM ~~37.96.1001~~ 37.96.1002;

(b) be at least 16 years old;

(c) not be left alone with children until they complete the required 30-day orientation training;

(d) receive oversight and guidance from an onsite lead teacher, site director, or director; and

(e) not remain in this role for longer than 90 days.

Authorizing statute(s): 52-2-704, MCA

Implementing statute(s): 52-2-704, 52-2-723, 52-2-731, MCA

37.96.910 SUPPORT STAFF QUALIFICATIONS

(1) Support staff who do not provide direct care for children must:

(a) have satisfactory results of background checks as set forth in ARM ~~37.96.1001~~ 37.96.1002; and

(b) complete on-the-job training.

(2) Support staff do not count toward compliance with required child-to-staff ratios.

Authorizing statute(s): 52-2-704, MCA

Implementing statute(s): 52-2-704, 52-2-723, 52-2-731, MCA

37.96.913 VOLUNTEER QUALIFICATIONS

(1) Volunteers may include a parent or guardian helping on a field trip, special guest presenters, or a parent or guardian, family member, or community member helping with a cultural celebration, or other activity. Volunteers:

(a) must be at least 15 years old; and

(b) must have satisfactory results of background checks as set forth in ARM ~~37.96.1001~~ 37.96.1002 if they will have unsupervised access to children.

(2) Volunteers do not count toward compliance with required child-to-staff ratios.

Authorizing statute(s): 52-2-704, MCA

Implementing statute(s): 52-2-704, 52-2-723, 52-2-731, MCA

Rule Reviewer

Heidi Sanders

Approval

Charles T. Brereton, Director
Department of Public Health and Human Services

MONTANA
ADMINISTRATIVE
REGISTER

TRANSPORTATION

SUPPLEMENTAL NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-87.2

Summary

ARM 18.8.1502, 18.8.1503, and 18.8.1505 are revised annually to adopt the most current published federal motor carrier safety regulations (49 CFR parts 373-399), ensuring MDT compliance with commercial vehicle safety in accordance with the federal motor carrier safety regulations as listed in 61-10-154, MCA.

Previous Notice(s) and Hearing Information

On April 11, 2025, the department published MAR Notice No. 2025-87.1 pertaining to the proposed amendment of the above-stated rules in Issue Number 7 of the 2025 Montana Administrative Register.

Reason for Supplemental Notice

The department inadvertently failed to send notice to interested persons within three days of publication pursuant to 2-4-302(2)(b), MCA. The department is extending the comment period in this notice, but the proposed amendments have not changed since the initial notice.

Comments

Comments must be received by Friday, June 6, 2025, at 5:00 p.m.

Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Friday, May 30, 2025, at 5:00 p.m.

Contact

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Montana Relay 711
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Rulemaking Actions

AMEND

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

18.8.1502 FEDERAL MOTOR CARRIER SAFETY RULES AND STATE MODIFICATIONS

(1) Any commercial motor vehicle or motor carrier subject to regulation by the department under 61-10-154, MCA, shall comply with and the department adopts by reference the following portions of the Federal Motor Carrier Safety Regulations of the U.S. Department of Transportation, subject to the provisions of (2). The regulations adopted are 49 CFR part 373, 49 CFR part 375, 49 CFR parts 377 through 379, 49 CFR part 382, 49 CFR part 383, 49 CFR part 385, 49 CFR part 386 subpart F – Injunctions and Imminent Hazards, 49 CFR part 387, 49 CFR parts 390 through 399, and Appendix G to subchapter B of chapter III, Title 49 of the Code of Federal Regulations, as updated through ~~April 25, 2024~~ March 26, 2025. Copies of the regulations may be obtained from the U.S. Government Printing Office, 732 North Capitol Street, NW, Washington, DC 20401-0001, or at www.gpo.gov.

(2) remains the same.

Authorizing statute(s): 61-10-155, MCA

Implementing statute(s): 61-10-141, 61-10-154, MCA

Reasonable Necessity Statement

The proposed amendment is necessary to adopt any federal motor carrier safety regulations adopted, amended, or repealed by the Federal Motor Carrier Safety Administration between April 1, 2024, and April 1, 2025, thereby ensuring MDT's administrative rule associated with transportation of commercial vehicle safety substantially complies with the federal motor

carrier safety regulations as listed in 61-10-154, MCA. The changes may be viewed at https://bit.ly/4aymCQe.

18.8.1503 TRANSPORTATION OF HAZARDOUS MATERIALS

(1) A commercial motor vehicle, motor carrier, or hazardous materials shipper shall comply with and the department adopts by reference the following federal regulations of the U.S. Department of Transportation concerning the transportation of hazardous materials: 49 CFR part 107, 49 CFR part 171, 49 CFR part 172, 49 CFR part 173, 49 CFR part 177, 49 CFR part 178, and 49 CFR part 180. The regulations adopted may be found in the Code of Federal Regulations, Title 49, chapter I, subchapters B and C, as updated through ~~April 25, 2024~~ March 26, 2025. Copies may be obtained from the U.S. Government Printing Office, 732 North Capitol Street, NW, Washington, DC 20401-0001, or at www.gpo.gov.

Authorizing statute(s): 61-10-155, MCA

Implementing statute(s): 61-10-154, MCA

Reasonable Necessity Statement

The proposed amendment is necessary to adopt any federal motor carrier safety regulations adopted, amended, or repealed by the Federal Motor Carrier Safety Administration between April 1, 2024, and April 1, 2025, thereby ensuring MDT's administrative rule associated with transportation of hazardous materials substantially complies with the federal hazardous materials regulations as listed in 61-10-154, MCA.

18.8.1505 SAFETY INSPECTION PROGRAM: PURPOSE AND OUT-OF-SERVICE CRITERIA

(1) remains the same.

(2) In addition to the federal regulations adopted in ARM 18.8.1502, the safety inspection program will follow Commercial Vehicle Safety Alliance (CVSA), North American Standard Out-of-Service Criteria (April 1, ~~2024~~ 2025), incorporated by reference. A copy of the North American Standard Out-of-Service Criteria may be obtained from the Commercial Vehicle Safety Alliance, 6303 Ivy Lane, Suite 310, Greenbelt, MD 20770-6319 or at www.cvsa.org .

(3) remains the same.

Authorizing statute(s): 61-10-155, MCA

Implementing statute(s): 61-10-154, MCA

Reasonable Necessity Statement

The proposed amendment is necessary to adopt the most current CVSA (Commercial Vehicle Safety Alliance) North American Uniform "Out-of-Service" criteria. The 2025 changes to the CVSA may be viewed at http://cvsa.org/wp-content/uploads/OOSC-Changes-Letter.pdf.

Rule Reviewer

Valerie A. Balukas

Approval

Christopher Dorrington, Director